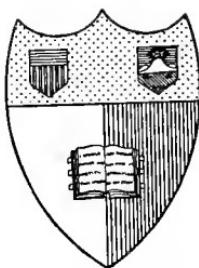


# THE PARTY OF THE THIRD PART

---

HENRY J. ALLEN

HD  
5504  
K2 A42



**Cornell University Library**  
*Ithaca, New York*

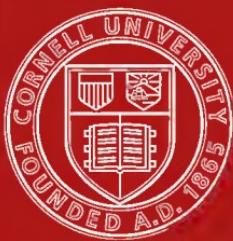
BOUGHT WITH THE INCOME OF THE  
**SAGE ENDOWMENT FUND**  
THE GIFT OF  
**HENRY W. SAGE**  
1891

Cornell University Library  
HD5504.K2 A42  
Party of the third part : the story of t



3 1924 032 446 076

olin



Cornell University  
Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.





THE PARTY OF THE THIRD PART



# THE PARTY OF THE THIRD PART

*The Story of the Kansas  
Industrial Relations Court*

BY

HENRY J. ALLEN

*Governor of the State of Kansas*



HARPER & BROTHERS PUBLISHERS  
NEW YORK AND LONDON

ET

16

A498618

THE PARTY OF THE THIRD PART

Copyright, 1921, by Harper & Brothers  
Printed in the United States of America

D-V

## ACKNOWLEDGMENT

It is a pleasure to express my appreciation for the assistance I have had in the preparation of this manuscript from Mr. Elmer T. Peterson, the associate editor of my newspaper, the Wichita *Beacon*. His careful suggestions, his assistance in collecting the material, and his able attention to the details of preparation have made possible the production of the book during an exceptionally busy period.



## CONTENTS

CHAP.		PAGE
	ACKNOWLEDGMENT . . . . .	v
	INTRODUCTORY . . . . .	xi
I.	THE RESULT OF THE FIRST PUBLIC TEST . . . . .	I
	Narrative of the "Referendum," or popular verdict on the Industrial Court—Incidents of the 1920 campaign.	
II.	A COURT WITH A HEART . . . . .	16
	Stories showing how the new law affected laboring men —The decisions and their effect—Incidents in court.	
III.	THE PERIOD OF UNREST . . . . .	39
	Importance of the industrial problem and the effect of strikes—Background for the new law.	
IV.	THE KANSAS COAL STRIKE. . . . .	48
	Story of the strike, the receivership, volunteer mining— Reaction of public sentiment.	
V.	THE MAKING OF THE COURT. . . . .	62
	Kansas situation typical, not exceptional—How the strike led up to the legislative session—Narrative of the session— Extracts of addresses and picture of the legislature.	
VI.	THE CARNEGIE HALL DEBATE. . . . .	92
	Next important event in the history of the Industrial Court—Narrative of the event.	
VII.	MR. GOMPERS'S SUPPLEMENTARY STATEMENT . . . . .	114
	Comment upon his article.	
VIII.	LABOR LEADERS AND THE WAR . . . . .	121
	Enlarging upon one of the themes of the debate.	

# CONTENTS

CHAP.	PAGE
IX.	WHY THE INDUSTRIAL COURT? . . . . . 131
	First of three chapters that deal with philosophy of the court—Beginning of analytical study.
X.	GOVERNMENT AND ITS POLICE POWERS . . . . . 144
	Continuation of analytical study showing that government itself is involved, and that the police power is one of the most important of governmental functions.
XI.	INVISIBLE GOVERNMENTS . . . . . 168
	Third of analytical chapters, dealing with the growing dominance of economic factors or the invisible empire, and showing how a political democracy must retrieve its power by means of industrial courts.
XII.	WHY RADICALS OPPOSE . . . . . 185
	Discussion of radical opposition to the court—Danger of too much reaction.
XIII.	STRIKES AND LOCKOUTS . . . . . 194
	Analysis of the fundamentals of the strike.
XIV.	THE FRUIT OF THE KANSAS COAL STRIKE . . . . . 208
	Description of some of the features of the Industrial Court law.
XV.	THE WEAKNESSES OF ARBITRATION . . . . . 221
	Early history of arbitration—French Conseils des Prud'hommes—Australian, New Zealand, and Canadian laws—Why arbitration as a principle is faulty—President's Industrial Conference report and its recommendations.
XVI.	SPECIALIZATION IN INDUSTRY . . . . . 241
	One of the most prolific sources of industrial trouble—The lack of the human touch—How the Industrial Court or code may alleviate this.
XVII.	COLLECTIVE BARGAINING . . . . . 247
	Attitude of the Kansas court on this question—A brief discussion of the purposes of collective bargaining.

## CONTENTS

CHAP.	PAGE
XVIII. SOME LEGAL PHASES OF THE INDUSTRIAL COURT . . . . .	253
Earliest English laws on industrial relations; their crudity	
—Development of modern legal conceptions as to the strike	
and industrial combinations.	
XIX. THE PUBLIC—WHAT IS IT? . . . . .	262
The party of the third part—Its relation to the forces of	
labor and capital.	
XX. SLOWING DOWN PRODUCTION . . . . .	265
Nonproduction the great cause of poverty—Fallacy of	
reducing per capita production for the sake of making more	
jobs—Laws of diminishing returns.	
XXI. CONCLUSION . . . . .	275
Government must take a more active hand in industry,	
that is inevitable; if not by adjudication, then by ownership	
of great industries—Adjudication the way of a republic—	
Summary of the issues of the Industrial Court discussion.	



## INTRODUCTORY

ARE industrial relations a matter of private contract?

Is the industrial problem confined within the four corners of a collective bargain?

A contract is between the party of the first part and the party of the second part.

In the evolution of civilization and its industrial implements a third party has come to the front, and the party of the third part is greater than the parties of the first and second parts. That third party is the public, and that means all of us.

Industrial relations have taken on a new meaning in society. In fact, the public is becoming enmeshed in them to such an extent that the relations constitute a great public problem.

This book is written in the hope that it may throw some light on the fundamentals of this problem. The reasons for the Kansas Court of Industrial Relations go deep into the sources of government itself, and it has been thought advisable, along with the story of the court, to set forth some of the basic principles of government as they affect industrial legislation.

The history of human advancement has been

## INTRODUCTORY

largely the history of bettering the conditions of the laboring man, and nothing should be done by the state to prevent the continuation of that steady progress. The laboring man must be given prompt and complete justice. He must be given the government's guaranty of absolute protection in order that his progress may be sane and constructive.

But the same principles of justice which are extended to his side of the quarrel must be extended also to the side of the employers. It is the duty of the government to see to it that the strife which has grown between them shall no longer express itself in a form of warfare upon an innocent and helpless public.

*“Salus populi suprema lex esto!”*

THE PARTY OF THE THIRD PART



# THE PARTY OF THE THIRD PART

8

I

## THE RESULT OF THE FIRST PUBLIC TEST

THE Court of Industrial Relations in Kansas has already earned its right to be regarded as a permanent institution. It has just completed the first year of its life and has more than justified the claims which its founders made for it. After the severest of tests the court has not only proved its great value in settling labor disputes in the state of Kansas, but is now ready to submit the result of its work to the other states in the Union.

In its brief life thus far the court has been pronounced upon by many different classes of people, and in almost every case the pronouncements have been highly favorable and even enthusiastic. In the recent general election more than a half million voters expressed themselves with reference to the court and the astonishing result of the referendum

## 2 THE PARTY OF THE THIRD PART

showed that the court received the approval of every county in the state, including the industrial communities.

In Crawford County, the center of the mining district and the home of Alexander Howat, district president of the International Mine Workers' Union, the most notable enemy of the law, the entire legislative ticket which was presented to the public for indorsement of the court was elected, while Howat's ticket, consisting of a combination of Socialists, labor radicals, Non-Partisan League members, and Democrats, united on a platform of opposition to the court, was decisively defeated.

From the moment the court was established the radical union-labor elements began to organize for the campaign to defeat the Industrial Court. Their first wish was to repeal the law and, failing in this, to secure the election of a legislature that would so alter it or load it down that it would become ineffective.

To this end an ambitious combination was effected —a coalition of radicals, Non-Partisan League farmers, and Democrats. The campaign was directed against the head of the state ticket and the legislative candidates, and the workers set out upon a systematic effort to misrepresent and discredit the law.

Under direction of Alexander Howat a force of speakers were brought into the state and many of them were trained for the task at the headquarters of the Kansas Federation of Miners, near the coal

mines at Pittsburg, Kansas. They were sent out all over the state. The leaders went even so far as to get colored speakers for districts where negro laborers predominated.

One of the expedients they used was the unfortunate fact that the Industrial Court, as now constituted, administers, in addition to industrial law, the duties of the old Kansas Public Utilities Commission, and since the court had allowed increased rates to various public utilities it was accused of being friendly to the corporations.

Another cunning, though baseless, accusation was that the court would regulate the growing and marketing of wheat. Farmers were told that the court would prevent them from forming wheat pools or holding their wheat for a better price, and that it would compel them to market their grain at the court's pleasure.

These charges created an opposition which, for a time, threatened the success of the court ticket. In fact, the strength of the opposition so impressed other candidates on the Republican ticket that a great many of them conspicuously avoided any discussion of the Industrial Court which was bearing the brunt of the state campaign, yet at the end of the campaign the Governor had been elected by a majority of more than 100,000 votes, losing only 3 of the 105 counties.

Every legislative candidate who opposed the court was defeated. Every man who voted against

#### 4 THE PARTY OF THE THIRD PART

the bill in the special legislative session that enacted the law was left at home. Senator Montee, representing Crawford County, the center of the coal-mining industry, voted against the bill and was defeated by a man supporting the law. Representative Shideler of the same county, who supported the law, was renominated and re-elected, and the other member of the legislature from that county is favorable to the law.

By order of state union leaders a special levy of seventy cents a month per member was made against the principal unions of the state for the raising of a fund to defeat the law. Mr. Howat stated publicly that Farrington, leader of the Illinois miners' unions, would send \$100,000 into Kansas to defeat the law.

The state Democratic organization worked openly and conspicuously with the radicals, and the Democratic national committeeman from Kansas spent weeks stumping the state, defending the activities of Mr. Howat and his workers. One of the Democratic candidates for Governor, in his pre-primary campaign, made an open bid for the radical vote by upholding the strike. The Howat element fought the state administration because of the Industrial Court, and the Democratic leadership fought the state administration to gain political ends; but the arguments were used interchangeably by the two elements.

It is a remarkable fact that the only Republican

legislator who voted against the Industrial Court bill was defeated by a pro-court Democrat in a Republican district in the face of a Republican landslide.

One of the peculiarities of the campaign in the labor districts was the interest of the women. Students of the suffrage problem, who have been investigating the 1920 election results for lessons on the woman vote, may gain something of value by analyzing the independent voting of laborers' wives in Kansas. The striker's wife, like that of the soldier, bears the brunt of grief and want, and it was discovered, particularly in railroad districts, that the wives of workingmen were taking a keener interest in the law than the men themselves.

At Herington, the seat of great Rock Island Railroad shops, I spoke to an audience composed of railroad men and their wives. I held before them, as justification for the law, the fact that their present leadership was costing them more than it was worth—that labor leaders who called strikes never shared in the suffering they entailed, for their pay went on just the same. I preached the doctrine that if the government could find justice for the laboring man in his quarrels, there was no reason why a laboring man should pay a percentage of his wages to keep a lot of professional leaders in easy circumstances.

After the meeting was over and the crowd had dispersed a switchman's wife made an extemporane-

## 6 THE PARTY OF THE THIRD PART

ous speech to a group of railroad employees who had gathered in a small group. Among other things, she said:

"You know he told you the truth, and he is the only man who has ever tried to do anything for us without charging us for it. You know that what he said about the leaders is a fact." She then turned to her husband and said, "Bill, if you had all the money that you have paid these leaders I could have had a vacation this summer."

In practically every labor center where I went to speak in the campaign the members of our committees prophesied that there would be interruptions and disorder—that the radicals had arranged a program of heckling and various forms of disturbance. In some cases walkouts had been planned. Yet I received in every place the most courteous attention and sympathetic hearing.

Noisy threats of radicals did not materialize, because the conservatives in the labor group—for the most part native Americans—insisted that the discussion should be greeted with a respectful hearing.

You can generally depend upon the radical in a case of this kind to make blunders. At Parsons, the home of the great M., K. & T. shops, the labor organizations were in the hands of the radicals. The day before I was to speak there the office of the central union-labor bodies issued a call which was published in the local papers. This call demanded

of the Republican central committee that my meeting be annulled and that I be not permitted to hold any meeting in Parsons. This effort on the part of a group which is always proclaiming the right of free speech disgusted the conservatives. In spite of the forewarnings, my meeting in Parsons was a distinct success, particularly so far as attendance and attention were concerned, and, although the community cast a heavy labor vote, I carried it by a good majority.

At Newton, the home of a great system of Santa Fe Railroad shops, I had been advised not to attempt a meeting. Gloomy forebodings were expressed by my own friends as to the effect of trying to hold a meeting there, and on the night I appeared most of the local candidates found it convenient to be in another place in the county.

Newton has a great convention hall, which is rarely filled. It was packed on the night of the meeting, the attendance being even larger than that which greeted the Democratic candidate for President two days before. Everybody was nervous about the outcome, including myself. I realized that a majority of the voters were supposed to be against the court. They gave me the most respectful attention and, though I invited questions, not an interruption occurred. But the meeting was somewhat sensational as to its aftermath.

Next day it developed that there was a large representation of shopmen in all crafts who were in

## 8 THE PARTY OF THE THIRD PART

favor of giving the Industrial Court a chance. Presuming themselves to be in the minority, they had kept silent. The day after the meeting their tongues were loosed and it developed that the Industrial Court had an astonishing following. Its friends began to fight for it, and in one instance the fight became an actual physical combat between a friend of the court and a radical—an unfortunate instance in which the radical emerged with a broken arm. I carried the county on election day.

At Ellis, a railroad center on the Union Pacific, the radicals had created so much disturbance that the Republican leaders had passed judgment against the policy of holding a meeting there. One of the leading radicals had stated openly and persistently that it would not do for us to attempt to hold a meeting. As usual, he did all the talking, and it sounded as though he represented the community.

When I arrived I was met by the members of the local central committee, who repeated some of the fearsome warnings of radical outbursts, saying that they did not believe I would be allowed to get through with the meeting. I opened the meeting by telling the audience of these warnings and by inviting any man in the audience to interrupt me at any time with any fair question that occurred to him. I urged all to listen to my explanation of the court and challenged the radicals by the flat statement that they were either ignorant of the law and its pro-

visions or maliciously misrepresented it. And I said I would prove this somewhat general charge. Not a single interruption occurred and there were no questions. At the conclusion of the meeting a young American-born engineer voluntarily arose and publicly said I had proven the charge—that he himself had been misled and intended to vote for me. He also said he would devote much of his time until election to make the principles of the law clear to his fellow workers.

In the election Ellis County, which was previously Democratic, went Republican for the state and national tickets, and for the first time in years elected a Republican legislator.

In Kansas City, Kansas, which probably has the largest distinctively labor population of any section of the state, there were warnings similar to those in Ellis. The police had been told that men were going to the meeting with eggs concealed about their persons and that I was to be served up as a sort of an omelet.

Kansas City in Kansas embraces Armourdale, the home of several thousand packing-house employees, and Rosedale, Argentine, and Armstrong, which are strong railroad centers.

On Labor Day the radicals in a parade carried the American banner upside down and bore various hostile inscriptions, one of which read, "To hell with the Industrial Court."

When it was decided to hold a meeting at Armour-

dale the city administration was worried and desired to extend special police protection. The meeting was a very large one and packed the hall to suffocation. Fully half the audience were women. The distinctive characteristic was intense quietness. The meeting was half over before there was a ripple of any sort of response.

Laboring men and their families, who had listened to radical leaders abuse the court in most savage fashion for several months, sat with most intense earnestness that was in the deepest sense inspiring. The radical leader of the community was there, occupying a prominent point of vantage. I could see members of the audience glance at him occasionally, and particularly when I cleared up some point which he had misrepresented to them. Yet not a note of partisanship was expressed by the great audience. It had decided to listen and learn the facts. No attempt was made to challenge any statement. There was no particular note of cordiality to me as I left, but certainly no indication of hostility. In my many years of experience I have never felt more vividly the presence of intelligent judgment.

However, the candidate for state Senator in that district, who, while a member of the Lower House, voted for the Industrial Court bill, was elected to the Senate and the results showed that I secured hundreds of labor votes.

One of my purposes in relating the foregoing in-

cidents is to show that in all these audiences there was present the quiet strength of the labor conservative with his American spirit of fair play. He may not be the major influence of to-day, but he is sure to be the influence that will ultimately save his organization from the destructive tendencies of the radical forces which seem to have captured it, but not yet captured him personally.

The attempt, by radical leaders, to dominate the 1920 campaign first became conspicuous in the spring. Early in June President Gompers issued a statement calling upon all union-labor men to vote for no one upon a congressional or state legislative ticket unless it was known that the candidate was friendly to organized labor. Being "friendly to organized labor" meant being willing to vote for organized labor's demands. Mr. Gompers, in his *pronunciamento*, especially warned against the selection of men who were "indifferent" to labor and then added that they wanted in Congress men who held "honest union cards." In other words, Mr. Gompers's effort was to secure a unionized Congress.

This idea of a bridled and shackled Congress is not only un-American, but it violates the very principle of representative government in legislative action as recognized by all democracies. Edmund Burke pointed out in his day the fundamental objection to a Congress made up of men who represent, not the interests of the people, but the special interests of classes. His declaration so clearly states the prin-

ciple that I have thought it valuable to use in this connection:

The opinion of a constituency is a weighty and respectable opinion, which a representative ought always to rejoice to hear, and which he ought always most seriously to consider. But authoritative instructions, mandates issued, which the representative is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience, are things utterly unknown to the laws of this land, and arise from a fundamental mistake of the whole law and tenor of our constitution. Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates; but Parliament is a deliberative assembly of one nation, with one interest—that of the whole—where any local purposes, any local prejudice, ought not to guide. You choose a member, indeed, but when you have chosen him he is not a member of Bristol, but he is a member of Parliament. If the local constituency should have an interest, or should form a hasty opinion evidently opposite to the real good of the rest of the community, a member for that place ought to be as far as any other from any endeavor to give it effect.

It has been interesting to observe, in various elections in which both congressional and legislative nominees have been chosen, the effect of Mr. Gompers's proscriptive program. With the exception of the success it has attained in a few of the more congested labor districts of the country, this un-American effort seems to have reacted upon itself and the result will probably be that future Congresses of the United States will be less responsive to the threat of union labor's retaliation than those of the past.

The manner in which the effort was carried on in Kansas prior to the 1920 primaries is doubtless typical of the working of the program elsewhere. Here, in the August primaries of 1920, for the first time in the history of the state, the radicals made an all-embracing program, the effect of which, if successful, would be to nominate radicals for every legislative office in both potential parties. The radical labor leaders and labor journals united with the Non-Partisan League in an effort to weld together union labor and farmers. The Non-Partisan League is the agricultural branch of the radicals and has a following in some of the communities where foreign-born populations have colonized.

In districts that were hopelessly Republican the radicals were instructed to ask for Republican ballots in the primaries that they might, by their solidarity, swing the party nomination to a radical sympathizer. There were four congressional districts in which this was done in Kansas and these happened to be districts in which the labor elements were especially strong.

In the Third District it was pointed out that the present incumbent had voted for the anti-strike provisions of the Esch-Cummins law and was therefore an enemy of labor. This is the district in which the mining counties are located and much was made of the fact that the present incumbent had been blacklisted by labor. Notwithstanding that, he carried every county in the district.

In the Second, Fifth, and Eighth districts similar fights were made and in each of these districts the candidates who bore the indorsement of the so-called farmer-labor organization were defeated overwhelmingly. The United States Senator who had voted for the anti-strike provision of the Cummins law carried all but a few counties in the state, while the fight which was centered upon the Governorship in a combined opposition to the Industrial Court, including Democrats, Socialists, I. W. W., and Non-Partisan League leaders, failed in every county except one. The American farmer would have nothing to do with the radical, and the legislative ticket nominated was even more overwhelmingly favorable to the Industrial Court than that which adopted it.

In addition, the results in Kansas were more emphatic than the results in Massachusetts when Calvin Coolidge was re-elected following the police strike. An aroused Americanism was asserting itself in a reaction which we hope will not be merely temporary.

Horace Greeley once said, "The American people are a great people when you make them mad." Just now we are mad over the audacity of the classes, but we must beware lest we allow this sentiment to lead us into reprisals. It should merely form the background against which determined and wise legislation may take sufficient courage to build a system of impartial justice.

Foregoing, in brief, are the salient points of the trial by ballot in both the primary and general elections before a jury consisting of the Kansas people. The jury had two chances at expression—once in the August primaries and then in the general election in November. The result was a clear-cut vindication of the law in so far as its standing in the minds of the people is concerned. The fight was bitter and vindictive in many cases, but even the opponents of the law have accepted the result in good humor. Such is the way of the American Republic.

## II

### A COURT WITH A HEART

**A** MAN with a peg leg, dressed in faded and greasy blue overalls, stood before the Kansas Industrial Court one day in the summer of 1920. He was a plaintiff in the case of the Stationary Firemen and Oilers, and his duties were that of tender at a turntable.

He had a wife and six children, he said, and had been getting \$97 a month—equivalent to about \$45 a month before the war. It seems that the railroad brotherhoods had not included him or his union in their efforts to secure higher wages and better working conditions.

He testified that he worked seven days a week and when he came home at night he would help his wife do the washing which they solicited in order to keep starvation away. Upon close questioning he told some other startling facts. It was not unusual, he said, for him to take home a large part of his noonday lunch that his wife had put up for him, and to put it back surreptitiously with the other food at night so that the children might have enough.

And then he would start in at nightfall and help get out a washing.

The presiding judge of the Industrial Court told these things, among other incidents of the kind, to a friend one day, and he got up from his chair and paced back and forth. Once his voice stopped and he went over to the window and stood for a long time, saying nothing. He is rather phlegmatic—some call him cold and some say he is partial to corporations. Suddenly he turned and almost shouted, as men do sometimes when they want to conceal their emotions: "This is more than a law! It's more like gospel. If the people would only understand it! Oh, if we were only thinking of the safety of the public we wouldn't be nearly so concerned! Why, this thing is more than that! It means justice to a man who has never had a chance to get it in such matters before."

The laborer was given an increase of more than 30 per cent. He belonged to a large and important class of railway labor for which the four brotherhoods have done nothing. In all the discussions of the Kansas law the importance of protecting the public has been stressed, and rightly so. Before entering upon a detailed description of the events leading up to its creation and enlarging upon the necessity for protecting the public, it may be of interest to give a number of outstanding facts in relation to the operation of the court in the first nine months of its existence and a number of in-

stances showing what the court has done for labor. The record shows that the court is a very human one, responding to human needs.

That the court attracted the instant approval and interest of conservative elements of organized labor is proven by the fact that during the first few months of its operation about fifteen petitions were filed with the court by members of union labor in the various crafts representing railways, mining, packing, milling, and power industries. Of these petitions practically three fourths were disposed of before the 1st of August, 1920. In at least twelve of the wage cases decisions have been rendered increasing wages, and every award but one has been accepted with sympathetic co-operation both by the laborers who filed the petition and by the employers.

The one exception is that of the Stationary Firemen and Oilers, just mentioned. Under the law either side may appeal from the award directly to the supreme court. The case was brought into court by H. W. Wendele, one of the vice presidents of the International Brotherhood of Firemen and Oilers. He is also vice president for Kansas of the American Federation of Labor. The award of the court in this case increased the minimum wage of this craft from 35 cents to 45 cents per hour, and the maximum from 42 cents to 55 cents per hour. It also allowed the men time and a half for Sunday work.

The railways appealed from this decision on the

ground that since the Federal government has established the Federal Wage Board for railway crafts, the Kansas court had no jurisdiction in this case. The appeal is now pending. A few weeks ago the Federal Wage Board rendered its decision touching the wages of this brotherhood. It is interesting to compare the award of the Federal board with that previously made by the Kansas Industrial Court. The Federal board's award is about 3 per cent under that of the Kansas court, except that the Federal board gives no recognition of the justice of a larger pay for Sunday employment.

Mr. Wendele has made a public statement to the effect that the award by the Kansas Industrial Court is regarded as a much more just and substantial recognition of the rights of this craft than is contained in the decision of the Federal Wage Board.

W. E. Freeman, president of the Kansas Federation of Labor, brought the case for the members of the Amalgamated Association of Street and Electric Railway Employees of America, against the Joplin & Pittsburg Railway Company. The court allowed a scale increasing the maximum pay of motormen and conductors from 42 to 55 cents per hour, blacksmiths from  $49\frac{1}{2}$  to 55 cents per hour, machinists from  $51\frac{1}{2}$  to 55 cents, armature winders from  $51\frac{1}{2}$  to 60 cents; headlight, taillight, and telephone men from \$126 to \$135 per month. Helpers and other minor employees were given corresponding increases.

The order of the court making these increases was

obeyed by the railway company, and the increases were satisfactory both to the employees and to the operators. This case attracted considerable attention through the fact that there had been, during the last three years, two destructive strikes upon this railway. One of them lasted ninety days and cost the employees, the company, and the community which the railway served many thousands of dollars, while the community which the railway served was badly crippled through the loss of this important adjunct to its commercial and social life.

In deciding this case the Kansas Industrial Court exhibited the real spirit of the institution. The presiding judge discussed in his decision the suggestion of a living wage, saying:

A living wage may be defined as a wage which enables the worker to supply himself, and those absolutely dependent upon him, with sufficient food to maintain life and health, with a shelter from the inclemencies of the weather, with sufficient clothing to preserve the body from cold, and to enable persons to mingle among their fellows in such ways as may be necessary in the preservation of life. But it is not a living wage only which this court is commanded by the people of this state to assure workers engaged in these essential industries.

After enumerating the classes of employment concerned in the order and pointing out the various degrees of value which their services offered, the presiding judge says:

Such persons, in all fairness, are entitled to a wage which will enable them to procure for themselves and their families all the necessaries and a reasonable share of the comforts of life. They are entitled to a wage which will enable them, by industry and

economy, not only to supply themselves with opportunities for intellectual advancement and reasonable recreation, but also to enable the parents, working together, to furnish to the children ample opportunities for intellectual and moral advancement, for education, and for an equal opportunity in the race of life. A fair wage will also allow the frugal man to provide reasonably for sickness and old age.

The Topeka local union of the Amalgamated Association of Electric and Street Railway Employees brought an action through local officers, assisted by one of the International vice presidents. The court granted an increase in wages ranging from 10 to 15 cents per hour. This increase was accepted by both operators and employers, and the peaceful conclusion offers a very sharp contrast to the experience of Denver, where the weapon of the strike was employed and which, before it was adjudicated, brought the loss of several lives and the loss of millions to the public, the employees, and the traffic lines.

One of the provisions of the law is that laborers or employers in nonessential industries may, by common agreement, appeal to the court for the adjudication of controversies, and the decision, when rendered in a voluntary appeal, becomes binding as though it were rendered in an essential industry. This feature of the law has been used and promises to offer a valuable departure.

Another development of value is in the effect which the presence of the court has in lessening labor controversies. This is mentioned in another chapter.

There has been a constant increase since the establishment of the court in the number of laboring men who approve it. With practically all the union-labor leaders fighting the idea, it was unavoidable that union labor should gain a misconception of the purposes of the court, but with their better understanding of it the conservative element in labor is coming to believe in its remedies. This is particularly noted in the coal-mining district, where Alexander Howat's loss of leadership is directly traceable to his virulent and unreasoning fight upon the court.

After the law was passed and some of Howat's miners had appealed to the court for the adjudication of grievances he called a meeting of the United Miners of his district and secured the adoption of amendments to the constitution of the organization, which provided that thereafter any miner who should take his grievance to the Court of Industrial Relations should be fined \$50 for appealing to the Kansas court. Any miners' official or miners' local union which should use the court should be fined \$500. The action with which the court met this effort of Howat to annul the Kansas law was to instruct the operators not to pay, under the check-off system, any fines assessed under these provisions of the United Mine Workers' constitution.

When, subsequently, the Industrial Court sought testimony in a case brought by some of the miners, setting forth grievances against operators, Howat

refused to testify, stating that his refusal was based upon the fact that he did not recognize the court. The district court of Crawford County ordered him to testify, and, upon his refusal, sent him to the county jail. He was released from the county jail under an appeal bond, taking his case to the supreme court of the state to test the constitutionality of the law. The supreme court held the law to be constitutional and Howat prepared an appeal to the Supreme Court of the United States.

An injunction was also granted, forbidding Howat to call a strike, as he had threatened to do, and a hearing was had for the purpose of enlarging the present order of the district court.

An instance of the unreasonable leadership exercised by radicals is shown in the case of a young American Irishman who was a witness before the Industrial Court in a hearing of a coal strike against the Central Coal and Coke Company. He testified that the men were called out on a strike in June or July, 1919, by Howat. The young man had a wife and children and wanted work to keep them supplied with necessities. He went to Howat after a week or two and asked him what the prospects were to get back on the job.

“Well, I don’t know,” said Howat.

“What did you call the strike for?”

“Well, that’s a long story,” was Howat’s paralyzing reply. “I can’t tell you now; I will tell you sometime.”

He happened to belong to a church and was anxious to stay in the district, otherwise he would have moved away. He stayed around, doing a few odd jobs, and soon began to feel a severe pinch of want. During the strike period his wife did not have any new clothing or shoes, and meat was a scarce article on the table. The strike was never called off until Judge Anderson at Indianapolis took a hand, and the young man does not know to this day what the strike was about.

Then there was the case of Alex McAlester.

McAlester is the oldest shot firer in the Kansas coal fields. His occupation is a rather dangerous one, and very important.

Under pre-war conditions a shot firer was paid a basic wage of \$2.80 a day for firing at forty places, and pro rata above that figure when more places were to be fired. When war conditions came the operators desired to save man power and required the shot firers to do more work, but without increasing their pay over a 65-place basis. For a long time McAlester, as head of his union, tried to get Howat to secure a raise, but the mine leader refused.

When the Industrial Court was established McAlester was one of the first to appear with a request for higher wages, disregarding the threat of a fine.

One of the members of the court asked him if he knew of the penalty he had incurred at the hands of the union leader.

"I'm not afraid," he said. "I've got a right to bring this case. I'm an American citizen."

The court investigated the case and set a date for the hearing. At the date set for this hearing McAlester appeared with a check in his hand.

He then informed the court that the check covered every raise asked for by his union, and the raise dated back to the filing of the complaint. As soon as the miners' president learned they had taken the case into the Industrial Court he took the matter up with the operators. McAlester thanked the court and said that until its establishment he and his union had had no place to go with their troubles, for no one would pay any attention to their claims.

A paradoxical instance came up in the form of an application for relief by Fred Kervis, in behalf of the street-railway employees of Hutchinson. Kervis was a candidate for the legislature from that district and made his campaign upon the issue of opposition to the Industrial Court. He is a Democrat with pronounced radical leanings, and has been active in radical labor activities. His application was for higher wages for the street-railway employees. The case was heard and an agreement was reached in open court between the employees and employers. In the official record of the court proceedings is found the statement by Kervis that the court had been very considerate and that the adjustment was very satisfactory. This case was disposed of before

election, but Kervis continued in his opposition and was defeated.

A switchman named W. F. Long, from Parsons, has written a complaint to the court which is probably one of the most remarkable documents of its kind in labor history.

He was one of the so-called "outlaw" switchmen who went out on a strike in Kansas City. After remaining idle for some time he went to Parsons and secured a job on the M., K. & T. Railway. After working two days, according to his statement, he was notified by the company that he was discharged, the reason being that the Railway Brotherhood had demanded his discharge from his employment because he had gone out on an unauthorized strike.

If the court handles cases of this kind it will be confronted with a variety of problems, but the salient feature is that the Brotherhood apparently has denied the "divine right" of Long to quit work, and the principal argument used by Brotherhood leaders—erroneously, of course—is that the Industrial Court abrogates the "divine right" to quit work. If the case goes to trial and if the Brotherhood officials are brought into court there will be seen the spectacle of the union leaders denying this "divine right." As will be seen in subsequent chapters, the court does not contemplate prohibiting anyone from quitting work unless that quitting threatens serious derangement of some vital industry.

The Kansas miners sometimes have to have money

between the semimonthly pay days. They "borrow" money from the companies, out of wages already due them. The average period for these loans is one week. For this service, which is quite generally utilized, the companies have charged 10 per cent, or at the rate of 520 per cent a year. The union officials had never tried to do away with this gouge. The Industrial Court wiped it out in eighteen minutes without a formal trial.

The unofficial record of the Kansas tribunal—one of the things that puts the heart into it—is by no means an insignificant part of the story. Like the proposed machinery of the President's Industrial Council, the court operates so as to let sunlight into dark places, to encourage voluntary conciliation between employers and employees, and to remedy unwholesome living and working conditions.

Its report of the survey of the Kansas mining region, being given out from time to time, is an interesting chronicle of life interest.

The evidence shows that there are from 10,000 to 12,000 miners engaged in the field [recites the report]. Fewer than 500 of them were born of English-speaking parents. Most of them were brought in large numbers by the owners of the mines, direct from Europe. They are Italians, Sicilians, Poles, Slavs, Austrians, a few Germans, and people of other racial types, principally from southern Europe. They were brought in as nonunion laborers, but are now 100 per cent unionized. They were housed in cheap wooden houses owned by the companies, unplastered, but ceiled, and located in what were called camps or little settlements surrounding the mines.

The evidence shows that there was little, if any, religious

## 28 THE PARTY OF THE THIRD PART

work done among them in the early days. There was a strong Socialist settlement. *The Appeal to Reason*, a Socialist paper suppressed for a time during the war, was published in the district. A large proportion of the miners became Socialists.

There was no evidence produced by the operators that shows any benevolent action toward these strangers from Europe who were brought in to work the mines. No welfare work was done. No money was spent except where absolutely necessary. The houses were mere shells. The rent charged was very high, considering investment. Several miners testified that there was a suspicion among the miners that some of the strikes were called through collusion between the union officials and operators, in order to create a scarcity, and therefore a brisk market. Some evidence was introduced that intimidation and duress were used by the miners' union officials in the government of the mines, so that men who wanted to obey their contracts and wanted to work were not permitted to do so through fear of physical violence.

A man must pay fifty dollars in order to join the union, and thus be permitted to work. Large sums of money are raised, not only by regular dues, but by special assessments and fines imposed upon miners by the union officials. The evidence shows that union officials have misappropriated considerable sums of money out of funds collected by fines and assessments. Ten thousand dollars was sent to a Socialist newspaper in Oklahoma. Large sums were paid to attorneys who, the miners testified, rendered no service to the organization. Money was used to assist in the defense of the I. W. W. A cash bond was put up in one instance for a man under indictment for conspiracy to overthrow the United States government.

One bright spot in the investigation, according to the report, was the fact that Americanism flourished in the schools in spite of unfavorable surroundings. Children of immigrant miners were asked how many Italians, how many Austrians, how many Russians there were among them, and not a sign was made.

When the count for Americans was suggested every hand was raised.

Here in the Pittsburg, Kansas, mining districts is a typical cross section of the restive, badly led foreign element, being painfully and gradually assimilated into American life under unfavorable industrial conditions. Who, heretofore, has taken the trouble to apply the healing hand? The unions? The mine owners? The national government? Who has shielded the bedeviled workers from greedy employers on one hand and selfish demagogic agitators on the other hand? Who has placed a friendly arm on Alex McAlester's shoulder and said, "We represent the public and wish you well"?

The strange arm is the new court with the friendly touch—the court backed by the just but kindly sentiment of the majority—the court that looks out beyond the pale of special selfish interest and declares in behalf of the public that the laborer is worthy of his hire and that the right to live is greater than the right to strike.

The first case formally adjudicated by this tribunal was that of the state of Kansas against the Topeka Edison Company. The Edison Company is impressed with a public interest such as to bring it within the purview of the new law, being engaged in the business of transportation and furnishing necessary electric current. The case was brought in behalf of local union No. 841 of the International Brotherhood of Electrical Workers. They were

granted an increase of wages in accordance with the scale in cities similarly situated. The court took into consideration the cost of living as well as a comparison with wage scales elsewhere, the hazard of the tasks involved, and the degree of skill required.

The second case was that of a union of street and electric railway employees against the Joplin & Pittsburg Railway Company. Here again an increase in wages was awarded on the basis of pains-taking investigation and comparison.

Other cases disposed of in order were as follows:

Linemen of the Pittsburg & Joplin Railway Company, increase granted.

Train dispatchers, no increase allowed.

Foremen of trackmen, increase allowed.

Substation operators, no increase allowed.

Trackmen, increase granted.

Vandenburg *et al. versus* Wichita Railway and Light Co., increased wages allowed. This case affected a large number of street railway employees.

A. G. Weide *et al. versus* Kansas Flour Mills Company, Great Bend, findings issued on working conditions.

Topeka Railway Company, wage increase allowed employees.

E. H. Sowers *versus* Atchison Railway, Light and Power Co., increase in wages granted.

A. H. Martin *et al. versus* Santa Fe and Union Pacific Railway companies, dismissed on account of Federal Labor Board award.

J. W. Arendt *et al.*, Goodland, *versus* Rock Island Railway, working conditions improved by agreement of parties.

The last-named case is of especial interest inasmuch as the settlement remedied a condition of thirteen years' standing. At Goodland, the home of some of the Rock Island shops, there are car sheds that have stood thirteen years without being inclosed. A defect in the old law made it impossible to compel the railroad to remedy the situation. The attention of the United States Railroad Administration was called to it without result. In the summer of 1920 the Kansas Industrial Court issued an order that the sheds should be inclosed in order to shelter the workmen in cold and inclement weather, and they are now inclosed.

In the case of the Stationary Firemen and Oilers, to which frequent reference has been made, the opinion, filed June 15, 1920, contains some interesting points.

It finds that some of the workers were not getting a wage large enough to support their families. In discussing a possible conflict with the Federal Transportation Act of 1920 the point is made that the order made by the Kansas Industrial Court is temporary in its nature and meant to be enforceable until the parties may agree, and is provided for the protection of the general public against the inconvenience, hardship, and suffering following in the wake of industrial warfare. A part of the decision follows:

From the evidence in this case it seems to the court plain that there is a material controversy, and that there is danger that such controversy may terminate in a cessation of work on the part of a large number of complaints which might result very seriously to the public. It is argued that the men will not strike because the Kansas law makes the strike unlawful. Nevertheless, the Kansas law distinctly recognizes the right of these men to quit their employment any time, and the mere fact that in large numbers they should become disgusted with the wage and with the conditions under which they work, would entitle them to quit at any time. These men are required to work seven days in the week in order to earn sufficient wage to support their families even scantily. The evidence shows a state of facts which would unquestionably warrant this court in taking jurisdiction in order to preserve the public peace, protect the public health, and promote the general welfare.

The tribunal is conducting a survey of the principal industrial centers of the state for the purpose of remedying housing conditions and of taking other constructive measures for the welfare of the workers. It has undertaken a big job, but it is backed by the law and public opinion and its members are going at the job with initiative and enthusiasm. It partakes more of legislative than of judicial sanction, but its final effects are of judicial nature, since the opinions of the court may be given the effect of decisions upon appeal to any court of competent jurisdiction.

The members of the court at present are: W. L. Huggins, lawyer, presiding judge; George H. Wark, lawyer; and Clyde M. Reed, newspaper man.

One of the chief arguments of organized labor against the court heard thus far is that the judges should be chosen directly by the people rather than

through executive appointment. The objection to this process of selection is rather obvious. It would lead at once to an effort on the part of labor and of employing capital to choose the judges of the Industrial Court and the positions would become political footballs in every election because these offices are of especial interest to both capital and labor. To prevent this unfortunate interference with the impartial purposes of the court the judges were made appointive, with overlapping terms so that the court is safeguarded against the possibility that any one Governor would have the appointment of the entire personnel.

The objection that the court is thus removed from the direct action of the voters is met by the fact that the Governor of the state is always responsible to the voters for the appointment of any judge upon this court, and the supreme court judges of the state, to whom final appeal may be taken, are also elected by the direct vote of the people and responsible for their decisions. This, it has seemed to us, has properly safeguarded the interests of all classes and has reduced the danger of the nullification of the purposes of the law by the factional elections of the Industrial Court judges.

During the recent campaign the wisdom of making the judges appointive became evident in localities where recent increases in public utility rates had created tender spots. The name of the judge who happened to write the decision was known and thus

the judge was personally attacked by newspaper organs unfriendly to the administration. If he had been up for election he would have borne the brunt of the attack and a temporary gust of passion or prejudice might cause judges to become affected by the pressure of public feeling or by fear of political defeat. It will be shown in subsequent chapters why an industrial court should be an integral body and not a collection of individuals with separate influences bearing upon each one. Making the judges elective might at once cause them to seek office independently and by appeal to certain class interests.

The sentiment of organized labor toward the court seems to be growing more friendly. Perhaps the most concise statement of the attitude of conservative organized labor toward the new law is made by Charles W. Fear, editor of the Missouri *Trades Unionist*, who says:

We know that workingmen with whom we have discussed the question declare the law is a move in the right direction for peace in the labor world. Why not give the law a trial and have it amended where it is needed?

This year in the Kansas coal-mining field will show a total production of seven million tons, according to late figures. This is an unprecedented figure, the average previously being about five and a half million tons. A more contented atmosphere prevails in the fields and the work of the court is bearing fruit.

A case which has attracted unusual attention is that of several flour mills of Topeka, from the fact that it had to do with an unusual feature of the law.

The price of wheat went down to a figure below \$1.50 in Kansas at points of origin late in the autumn of 1920. This was below the cost of production, the farmers claimed, and they began to hold back shipments to the mills. The National Wheat Growers' Association, composed of a large number of farmers in Kansas and other states, announced that an effort would be made to hold the wheat for a price of \$3 a bushel.

The propaganda was at least partially successful. At any rate, a shortage began to be noticed.

A number of mills in Topeka closed down and let out some of their employees. It seems they had neglected a careful reading of the Industrial Court law, which provides that any establishment engaged in the manufacture or preparation of food products must not close down or curtail production without a hearing before the Industrial Court and the receipt of permission for such curtailment.

The court at once issued a summons to the owners of the mills, citing them to appear and answer to the charge of curtailment of production.

It was a novel action. Probably nothing of the kind had ever taken place before.

The mills obeyed the summons. Upon a hearing of the circumstances the necessary permission to reduce output was secured.

Overcritical observers of the court have pointed to the Kansas flour-mills case as an instance of a court trying to force an industry to continue at a loss. Of course it was nothing of the kind. Those who make the contention have missed the point, forgetting that the essential consideration is that of police power, to be discussed later in this book.

It is self-evident that no employer can be forced to hire workers at a loss to himself. The law cannot be construed so as to force him to do so. It is specifically stated, to make assurance doubly strong, that the employer is to have a fair profit in production.

In the second place, no reasonable person believes that any court in America could or would attempt to compel any manufacturer to produce something out of nothing. If there is no wheat to be had no flour can be milled. One must give courts credit for common sense, and an industrial court is entitled to the same amount of this commodity as a civil court.

In the third place, it is plain from the spirit and letter of the law that no attempt will be made to force a continuation of production under difficult circumstances unless the very lives or health of the public are endangered. That is where the police power of the state enters into the calculation.

Now we come to the employee's side of this question.

In the slacking-up period noticed in many in-

dustrial circles in the latter part of 1920 it was nothing unusual for factories to close down arbitrarily for a few days and then open up with offers of employment at a lower wage. Although such activities were usually covered up, it was rather evident from the symptoms that one important cause of shutdowns was the desire to reduce wages and make the men like it. Factories are willing to have their plants idle for a few days sometimes if they can save a dollar or two from each man's wage for a period of several months or years.

Some of the great woolen mills were closed down early in 1920, not only with the rather evident policy of securing labor at a lower wage, but to curtail production and hold up prices.

Are they justified in so doing? Perhaps so and perhaps not. The Industrial Court proposes to find out. It does not propose to permit wholesale dislocation of vital industries affecting public welfare without a hearing. Are such industries rightly subject to court inquiry? We believe they are. They have grown to such huge proportions and are so united and centralized by organization that they have become vital factors in human existence and therefore rightly subject to the police powers of the state.

The Kansas flour-mills case was adjudicated promptly and without oppressive restraint. The adjudication had a wholesome effect on the general situation. Employers saw that they could not

discharge labor or curtail production of a vital necessity in an offhand manner. No one was hurt, for the court purposes justice and fairness. But in the background there was the long arm of government and the potential guardianship of the lives of the people and the rights of the workers in times of stress or emergency.

The first decisions of the court in various instances have created a valuable body of law which has proven in every case the potential worth of the Industrial Court as a method for meeting the controversies which arise out of a period characterized by a feeling of peculiar social unrest.

### III

#### THE PERIOD OF UNREST

**T**HE intimate family quarrel between those who labor and those who employ is the most poignant issue in America to-day, overshadowing that of the League of Nations and the deep concerns of our far-flung international relationships.

This has grown into a national problem, not because all who labor are directly concerned in it, for out of 45,000,000 people who labor in the United States, less than 5,000,000 are members of the solidly organized forces of union labor belonging to or affiliated with the national Federation. But the personnel of the 5,000,000 contains the most expert labor upon which America depends for her essential industries.

The making of food, clothing, the production of fuel, and the transportation of these necessities are in the hands of a solid minority whose organization is builded for war against the owners of the institutions which control these productions and which are likewise builded for war.

Between these two potential machines of production is wedged the public, dependent upon both

the worker and the employer. The public is a huge mass, inert and protoplasmic, having no power of protection save the good-natured power of passive resistance. When this public is squeezed between the opposing and hostile forces of labor and capital, the result is called economic pressure.

The remedy proposed by the President's Industrial Conference leaves the decision in the last resort of an industrial controversy to "public sentiment." Since public sentiment is the sole contribution of the inside mass, the conference rather takes the position by inference that economic pressure may be exerted until the public is ready to give up its rights and surrender to the pressure.

The Federal government, which has jealously safeguarded every right of the citizen and protected him against every other danger, has admitted in the report of the second Industrial Conference that the best it can do is to leave the public, in this dire emergency, to its own devices.

We all of us have a consciousness that the industrial controversies of the past two years have had a devastating effect upon us, but it is doubtful if the general public realizes how much the industrial quarrel has cost.

The year 1919 was the greatest strike year in the history of the United States and the present year apparently is maintaining the extravagant record. During the twelve months following the armistice there were more than three times as many strikes

as in the same period the last year previous to the war. In August, 1919, there were 356 strikes, as compared with only 76 in August, 1915.

The American citizen has been a long time in realizing the effect of strikes upon himself personally. If he were not directly involved he gained the idea that the strike did not concern him. He has not realized that an epidemic of strikes such as this country has been experiencing either directly or indirectly touches every one of us in that most sensitive spot—our pockets, because it influences the cost of living and the movement of business for the whole people.

In September, 1919, Mr. W. T. G. Harding, governor of the Federal Reserve Board, made this statement: "If the world would declare an industrial truce for six months it would do more to bring down high prices than workers could ever accomplish by strikes and agitations."

According to the best statistics available, the number of workers who struck in 1919 was close to two millions. In addition, there were as many threatened strikes as actual ones, and although these were settled without a walkout, they caused a definite loss in production. The loss, according to the statistics which Roger W. Babson gives us, was appalling. He places it at billions of dollars for the year 1919 alone. Of course, this loss is not confined to the strikers and their employers. Everyone must stand his share. It is estimated by Wash-

ington statisticians that the cost of the strikes to labor in loss of wages alone, in 1919, was more than \$725,000,000.

Everybody lost something. Instance the harbor strike in New York City in October. In the third week of this strike the shipping authorities estimated that it was costing \$1,500,000 a day, and this was aside from the expense of maintenance and interference with other branches of business. Building materials were delayed, with the result that contractors lost money, workmen were idle, and the construction of new houses, stores, and offices—the only solution of the high-rent problem—was held back. This is only one instance of the ramifications.

The strike spirit permeates like a poison and the idea becomes prevalent that a man may violate the law in the name of a strike. The poison even affects the morale of those who do not strike and of those who return to work after the strike is over. It seems to poison the entire commercial system. It is true that increases in wage have been followed by increases in the cost of living, and it is equally true that practically every increase in wage has been followed by a decrease in production. There seems to have been an alarming decadence of the philosophy that there must be an honest day's work for an honest day's pay.

It is probably true that the total cost in wages, in production, and in added prices, which have come to us through the demoralization of production and

distribution, would equal last year the billions we have expended in the war, if a competent comparison might be had of present conditions with the pre-war situation in all lines.

As a result of the widespread realization of the condition the subject of a remedy is being more intelligently discussed in America to-day than ever before. We have come now to realize that the term "industrial war" means exactly what it says. There is going on in the nation to-day a conscious effort to establish a class control over production. On an occasion last year the president of the American Federation of Labor appeared before a committee of Congress, declaring that if any limitation was placed upon the right to strike it would not be obeyed. That defiant declaration startled many members of Congress and millions of American people into the realization that an issue was being made between a minority and the government and the gentleman who represented the minority was presenting what he regarded as an unanswerable argument for the necessity of government confining its restrictions to the limits of safety.

We have suddenly learned that modern civilization makes a hundred million people interdependent upon one another. The power of a minority, which has secured a monopoly in the production of a needed commodity, is the power to menace the public and supersede government itself. It will be a mistake for the nation to continue the discussion of

this question in terms merely of "employer" and "employee." It is a case of society protecting its own life under the conditions by which it must live.

The industrial civilization that has produced a gigantic urban population and has congregated great groups into separate districts has made these groups utterly dependent for their continued existence upon uninterrupted communication, production, and transportation. The solid minority, which is using its power to close down essential industries, has assumed an importance out of proportion to its numerical strength. The fourteen million farmers of the nation should be relatively, at least, of equal importance with the five million members of organized labor, but they have not organized for the purpose of controlling the production of their fields and pastures, and hence they present no such problem.

The two camps of employing capital and organized labor confront each other and demand the right to carry on the battle without regard to its effect upon the public. It should be pointed out, of course, that there are many great industries which have formed with their employees a system of co-operation and shop government that presents a hopeful sign, but in the essential industries, where economic pressure may be applied with ghastly results, the quarrel has reached an intensity which calls upon us for the application of a remedy which shall

be sufficiently impartial to deal justly and finally with the rights of labor, the rights of the employers, and the rights of the public. It is manifest, of course, that such a remedy could be applied only by the broad and impartial power of righteous government.

If moral principles inherent in American institutions cannot be extended to meet this emergency, then American institutions have failed, because the issue here is the issue of government and its ability to meet the challenge of any class which has decided to live above the law.

The Kansas legislature, which has attempted to supply this remedy, realized during that critical period that government was the only source of protection. The efforts of the succeeding chapters of this book will be to point out the principles of our law, the background of events and public sentiment which made possible its adoption by an almost unanimous vote, and the just and satisfactory manner in which the Court of Industrial Relations has functioned during the brief period of its operation.

We do not contend that the law has been free from violation, that its operation has been perfect, or that it has solved entirely the labor controversy, but we do believe it has functioned as well as any important law of such broad powers could function in its early periods. It is growing constantly in the favor of both laborers and employers and of the

public, and there is increasing expectation that it will prove as completely workable as other great laws on our statute books.

It has pointed out both to capital and to labor the fact that it is possible for government to set up standards of justice and maintain them. There is nothing which has the teaching power of law, and the presence of the Kansas court is rapidly convincing laboring men and employers that there is a better way for the solution of their difficulties than industrial war. The presence of the court, offering its remedies, has reduced controversies. Men representing both sides, understanding their rights in court, get together more easily because the law has narrowed the issue. The state has declared that the laboring man has certain rights which guarantee to him fair wages, decent housing conditions, safe working conditions, and an opportunity to accumulate by reasonable frugality enough to enjoy the blessings of civilization. Therefore, he is safeguarded by this standard and may depend upon the court for the adjudication of the details. The law is equally plain in its provisions for safeguarding the rights of capital, and both parties to the controversy are confronted with the unalterable fact that the general public shall not be made at any time the object of economic pressure.

The Kansas tribunal is not a flash in the pan. It is not the hastily considered product of a temporary wave of passion or prejudice. Many of its

moving principles have, for some time past, been employed in individual instances. The Kansas coal strike in 1919 served only to dramatize the situation which had existed for decades. Special care was taken not to permit the fact of the strike to have any undue or temper-tinged effect upon the legislation.

## IV

### THE KANSAS COAL STRIKE

THERE are several industrial districts in Kansas, but in only one of them has there been an unusual degree of industrial strife. The lead and zinc districts around Galena and Joplin, the packing-house districts of Kansas City, Kansas, the milling centers, and the railway centers, have been little affected by labor conflict. Although some of these districts are heavily populated, the employers and employees have been carrying on the operations in a spirit of friendly co-operation which has produced ordinarily satisfactory results.

The coal-mining district of the state, in which some fifteen thousand miners are engaged, has offered a sharp contrast to the situation in the other districts. Not only has it been a 100-per-cent-organized industry so far as union labor is concerned, but it has been under the ultraradical leadership of a district president, Alexander Howat. The quarrel between the operators and Howat has been continuous, and a feeling of intense hostility has been engendered. A very great majority of the

miners are foreigners and followed the leadership of their radical officers blindly.

For forty-five months, ending December 31, 1919, there were 705 separate strikes at individual mines in the state of Kansas, and the amount of dollars and cents gained by the miners was \$852.83. The total loss to the miners in wages, figured at the scale rate per day per man on account of these strikes, was \$3,866,780.34. Of the \$852.83 reclaimed up to December 31st, \$765 was simply an adjustment in the price of fuses and dynamite, which was being adjusted when the strike was called, so that the only actual benefit of these strikes, which cost nearly \$4,000,000 in wages, was \$87.83.

In addition to this burden, the miners had paid out of their slender purses an enormous sum for strike benefits and to maintain the warlike organization with which they carried on an active conflict with the operators. In 1919 alone it cost these miners, in the form of dues and assessments, \$157,000 to maintain the organization.

The people of the state were always conscious of this conflict and the district had come to be known as the "bad lands." In Pittsburg, the center of this district, civilization held a peculiar expression. Strikes, lockouts, boycotts became humdrum, and both business and industrial life contained a feudalism which had existed so long that it was regarded as commonplace and unavoidable. The people, who were not directly concerned in it, viewed it with

good-natured regret and sometimes they talked about remedies in a purely academic fashion.

There was enough coal. The operators, who always outplayed Howat, seemed to make sufficient profits. The public paid the bills to meet the expenses of the private war, and the first sufferers were, of course, the miners, who became merely the helpless pawns in the game.

Unionization was compulsory and the discipline applied to any miner who did not obey the orders of his officials was severe and unrelenting. It had been many years since a pound of coal had been produced in that district except under the elaborate regulations of the union organization, and the constant reminder of the district president was that not a pound of coal would ever be produced except by unionized organization.

It was natural that, with this spirit of continued hostility existing, the housing and living conditions were neglected. The leaders of both sides confined their attention to the daily quarrel, and the conditions which exist through co-operation in other industries of the state were wholly lacking in the mining district. The state had ameliorated the hard conditions somewhat by establishing and maintaining at its own expense rescue stations, and had passed severe laws relating to the safety of the miners in their working conditions; but on the surface it was, while being the most highly organized district of the state, the most unsatisfactory and wasteful,

not only of human life, but in respect to the productivity of the commodity. It had been thus for a long time and people naturally concluded it would have to remain so till the end of time.

Then the general strike was ordered during the winter of 1919-20. The crisis of this strike threatened the public almost immediately. The Kansas problem was very intimately a part of the national problem. Within two weeks schoolhouses closed. Industries shut down. Stores shortened their business hours, and soon after this there was suffering in homes and in hospitals through lack of fuel.

The supreme court was asked to turn over the mines of the state to a receivership to relieve the public from freezing. The supreme court granted the petition and the property of the mines was placed under the charge of the state, for the purpose of meeting the public emergency and protecting the public health and safety.

After the mines had been acquired by the state I spent a week holding public meetings among the miners, urging them to go back to the mines and work under state operation pending the settlement of the controversy which was then being carried on by miners' officials and operators at Washington.

The assurance was given that whatever benefits in the way of wage increase should finally be agreed upon at Washington would be paid to the miners from the date of their beginning. The further assurance was given that in case the miners' officials

and the operators should not reach a satisfactory agreement by the 1st of January—it was then the middle of November—the state would at that time take up the matter and agree upon a satisfactory wage, and the wage thus agreed upon would be made retroactive to cover the entire period of work performed under the state's direction.

I was warned that an effort to hold meetings would result in riots and disturbances, that the miners would resent the interference of the state, and that the effort would lead to disorder. This statement was given out by the miners' officials. Naturally enough, the operators also objected to the state's interference. In justice to the miners themselves, it should be said that there was not a single instance of disorder. They crowded the meetings and listened generally with sympathetic attention.

I believe it safe to say that at least 40 per cent of the miners, representing generally the conservative American-born element, wanted to go back to work. They were disturbed by the thought that they were bringing upon a helpless public, which had no interest in their quarrel, a very grim, a very real danger, and that the deaths which would ensue as the result of the fuel famine would be charged directly to them.

In every meeting miners came to me individually and said they would like to accept the proposition, but they did not dare to return to work. It would mean that their cards would be taken away from

them. They would be deprived of future opportunity to work. Their families would be persecuted and even their children made to suffer the odium which attaches to the word "scab."

"If you can get Howat to order us back to work we will be glad to go," was an almost unanimous expression.

The growing sentiment of the miners in favor of the state's proposal became so apparent that Howat sent daily messages from Washington, where he was in conference with the leaders, urging the Kansas miners not to desert him. This he did in plain violation of the Federal injunction which Judge Anderson had issued against the miners' officials.

At the end of a week, when it became apparent that the miners would not go to work for the state, a call was issued for volunteers. Within less than two days' time more than eleven thousand Kansans volunteered for service in the mines. Many of them had never seen a coal mine, but the inconvenience and the dangers of the fuel famine were already so apparent that they volunteered, not because they were interested in any degree in the fight between the operators and the miners, but because they wished to save the public.

Many volunteers also offered their names from Oklahoma, Missouri, and Nebraska. Governor McKelvey of Nebraska sent me a telegram offering fifteen hundred young men for service in the mines if they were needed, and calling attention to the fact

that Nebraska, which had no mines in the state, had reached a point of suffering in the fuel famine.

We began the operations by manning the strip mines of the state and chose for this purpose a sufficient number of young men to operate these mines. A very large percentage of these men were formerly in the service of the army, many of whom were from the schools and colleges of the state. They were brought to Pittsburg in special trains. A regiment of the Kansas National Guard was also brought along to do guard duty at the various mines, and General Wood of the Regular Army sent six hundred troops to form an encampment there, but to take no part in the activities unless it should become necessary to place the district under martial law. Fortunately, none of these troops was needed.

The miners showed very little resentment. They had been told the week before that this would happen unless they went back to work. They had been given the first chance and they accepted the situation without resistance. I am inclined to think that if the soldiers had not been there we might have needed them on some occasions.

When the special trains bringing in our volunteer miners arrived they were met at the stations by large groups of miners who had come, I dare say, to give them the usual reception which is accorded strike breakers by union miners. When these young Kansas volunteers, most of them dressed in their army uniforms, detrained, they were received in

utter silence. The miners had never seen any strike breakers like these. These young men, keen-eyed, stalwart, kindly-faced, were so obviously what they were—a lot of whole-hearted, patriotic young men, engaged on a mission to relieve the famine, that even the miners saw how incongruous it would be to receive them as strike breakers.

I remember an incident which is rather revealing. A striking miner, as these volunteers marched up the main street of Pittsburg, approached one of the volunteers and began telling him how difficult it would be to produce any coal under the present conditions. He reminded the volunteer that the mines had been shut down for several weeks, the pits were full of water, the machinery out of repair.

"Why," said he, "even we could not produce any coal this sort of weather."

The young volunteer listened to him for a few moments and then said, "Did you ever see any trenches in France?"

It was bad weather. The thermometer was at zero and the Kansas zephyr was functioning. It was bad weather for coal mining. It was worse weather to be without coal.

The volunteer miners went to the mines that night, and while the National Guard was throwing out the guard lines these young men began to pump the mines and repair the machinery. They worked at an occupation altogether new to them in the bitterest weather, living in tents. Many of them had

come from indoor occupations and were not accustomed to hardships, but they overcame obstacles that seemed insuperable to experienced miners and in ten days they produced enough coal to relieve the emergencies in more than two hundred Kansas communities. By the time the regular miners came back to work every Kansas community that had called for fuel had been tided over and the effect of the strike had been broken.

The operation of the mines under the state, even with unskilled labor, was not disastrous in a financial way. By the time the receivership was discharged a sufficient amount of coal had been produced practically to meet all of the expenses of the operation.

When there was added to this a sum due the state from the operators for the work it had accomplished in placing the mines in better condition, all the expenses had been met except that incident to the regiment of National Guard—about \$70,000. This, however, was not an expense of mining. It was an expense of government.

The expenses of the state operation were greater than mining by experienced miners, but this added cost was taken care of by the fact that we saved the middlemen's profit in marketing the coal. The cars were delivered directly from the mines to the communities and sold at the fuel price established by Doctor Garfield. The mine operators were paid the customary royalty on their coal. The only loss was

to the retail dealers, but since they were not in the coal business during the strike it really did not cost them anything.

The magnificent young men who came to the mines and worked as volunteers were paid \$5.70 per day and given their transportation from their homes to the mines. I have never seen even in the war a finer spirit of patriotism than they manifested. They never inquired what the wages were to be or what the hours were. They worked from daylight till dark, lived in zero weather in tents, and went back to their schools and colleges and other occupations at the end of their service, with the finest spirit of enthusiasm which grew out of the realization that they had accomplished a valuable purpose. It has always seemed to me as though Providence must have sympathized with the effort, because in all the several hundreds of young men we did not have a single death as the result of sickness or accident.

But the real benefit of the operation, great as was the value of the coal, was in the fundamental realization which came to all our people that the government has the right to protect the public against the dangers of a strike in an essential industry. The public was ready for a remedy and most of the miners were sick of a condition which deprived them, in the dead of winter, of the wages which they needed for themselves and their families.

The instances which reveal the utter lack of con-

sideration on the part of the union officials for the real welfare of the miners had so multiplied that we all realized the impossibility of continuing an industrial civilization so absurdly out of tune as the one in the Kansas mining district.

A typical instance of the brutality in the situation related to the depriving of the local hospital of coal by order of the miners' officials. This was an institution builded by public subscription out of the pride of Pittsburg. It was full of patients, half of whom were union miners. Within three or four days after I had moved my office to Pittsburg two miners came to me to tell me that the hospital was out of fuel. They said that for several weeks they had been supplying the hospital from a small shaft which these two miners owned. That morning they had been warned by the miners' officials not to produce any more coal for the hospital or for anyone else. They told me that unless the state could supply coal to the hospital it would be impossible to keep up the temperature, and that death was bound to ensue as the result of the fuel famine by the following day.

It seems incredible, as I look back upon it now, that there, in the very heart of the coal-mining district, with fifteen thousand miners idle, several hundred sick people, half of them union miners, should be threatened with death through lack of that commodity which existed in such abundance and needed only the work of two men to keep it going.

When I at first refused to supply the coal on the ground that the miners' officials should make an exception of the hospital and continue to produce the coal for it themselves, I was made to realize the ghastly truth that unless I provided the coal for that hospital it must go without fuel; so of course the coal was provided, and for the ensuing month several hundred union miners were kept alive by the use of that commodity they had been taught to despise—"scab coal."

Here is another instance: one day a discouraged wreck of a woman came in from Weir City to see me. She told me she had spent all the money she had to come in for the purpose of telling me her troubles. She explained that her husband had been on a strike for six months, a strike called in the mines of the Central Coal and Coke Company. Her husband didn't even know what the strike was about. He had asked for a statement of the grievance, but had never received it, and for six months she and her husband, with a family of several children, had existed upon the strike benefits doled out by the miners' treasury—a sum which never exceeded nine dollars a week.

She said they were in a desperate state and when our volunteer miners arrived at a mine not far from her home she went down to see if she could not procure some washing and some mending from these volunteers. She had brought back some work which would give her the opportunity of earning

several dollars for the needy household, but on the night before she came to see me a committee from her husband's own union had called upon her and forbidden her to do the work and had ordered her not to go back to the mine.

I suggested that she go ahead and do the work, promising that she should have whatever protection she needed. She replied, "I am not afraid that they would harm me while the state is operating these mines, but when you go away, some of them would burn my house."

This is the spirit of brotherhood evidenced in many instances.

A man by the name of Guffey, an American-born miner, decided not to go out, but stayed on the work, joining in with the volunteers who were running the state operations. His union suspended him for ninety-nine years and then threatened his landlady and his groceryman with a boycott in case they did not put Guffey on the blacklist.

Surely the state can foster a better spirit of brotherhood than this.

One of the interesting results of the coal-mining operation was in the reaction of public sentiment in Pittsburg. When the state began to operate, merchants, bankers, and business men went to considerable pains to exhibit to the miners their lack of interest in the effort. They feared that they would be boycotted by the miners if they exhibited any sympathy with the state, and in refraining from an

attitude that might be interpreted as sympathetic they leaned backward, and in many instances their attitude could be interpreted as sympathetic to the strike.

Within ten days from the time we began to produce coal, the sentiment changed. A meeting of the Chamber of Commerce was called which indorsed the action of the state, and business men began to talk about a new Declaration of Independence for Pittsburg.

# V

## THE MAKING OF THE COURT

“**K**ANSAS is an agricultural state.”

This is one of the stock objections used against the Industrial Relations Court and it is an argument that, when examined closely, is found to be empty. The very fact that Kansas is an agricultural state served to make the issue more vivid when it appeared. A green house contrasts with a background of bright sky more than it contrasts with a background of forest, but the house is green in either case.

It has been said that the making of a law is to be judged in connection with the attendant circumstances. This is true in a degree, but it should be remembered that there was not a single element in the Kansas situation that does not apply with equal force in every other state in the Union.

Possibly in the centers of business and industry the factor of economic prestige and political solidarity, whether of labor or capital, has become so much a part of the daily life that it has imperceptibly drawn out of that life a measure of democratic impulse. Possibly people have become less sensitive

in reaction to the whiplash of economic masters, taking it as a matter of course and not realizing what is taking place. This was illustrated even in Kansas when the business men in the coal-mining towns accepted the strike atmosphere as almost a normal thing.

When the Subway fails to operate for any reason the average New York citizen takes on a resigned look, shrugs his shoulders, and does the best he can. If the telephone service is bad, or if there is a milk strike, or if a shipment of goods is held up by a railway dispute, the average man in the large city feels like an atom in a whirlwind, and takes things for granted.

In the back of his head, however, there is a subconscious impulse that rebels, and he feels in a sort of a disturbed way that things are not going just right. He is under the economic restraints that have been piled and pyramided upon him with no legal or moral warrant.

In Kansas the 1919 coal strike was exactly like the 1919 coal strike in other states so far as essentials were concerned. Alexander Howat, the president of District No. 14 of the United Mine Workers, was more autocratic, headstrong, and radical than many of the other district presidents, but he was acting in a perfectly regular manner as far as union tactics were concerned. Other men in Illinois and Pennsylvania were acting like he did.

The people of Kansas breathed the same kind of

air, ate the same kind of food, and talked the same language as the people of Philadelphia or St. Louis. They needed the same kind of fuel to keep them warm. They needed that fuel whether they were farmers or plumbers or garment makers or stock brokers. The labor-union men needed the coal the same as the farmers.

The issue was very simple and clear cut, and it was precisely the same issue that existed in all parts of the country affected by the coal strike. That issue was:

“When there is a dispute in a vital industry and suffering and death is threatened, is the public welfare more important than the private quarrel between the employer and the employees?”

The same question existed in Pennsylvania. It existed in the Chicago milk strike, when babies died from the lack of nourishment because of that strike. It existed in New York when the freight handlers refused to haul fish that were caught by nonunion men or handle other foodstuffs originating under the labor of nonunion men.

The uninterrupted flow of necessary commodities at reasonable prices is a thing that has become infinitely more important since specialization and organization have become such dominant factors. The corner in wheat was a crime against the public. The juggling of the sugar price was a crime against the public. These things all affect the man in Boston or New Orleans or San Francisco or Minneapolis pre-

cisely as they affect the farmer on the plains of Kansas.

And so the objection that "Kansas is an agricultural state" is a provincial argument, indicating a lack of comprehension of the fundamentals.

The situation in Kansas, as it would have been in several other Western states as well, was complicated by the fact that the Non-Partisan League was strenuously seeking a foothold there. It is the principal effort of the League to neutralize the natural conservatism of the farmer, make a Socialist out of him, and join him up with radical labor of the Howat type. The movement in St. Paul and Minneapolis is indicative of this purpose, radical labor being joined to the so-called farmers' organization. The League is not strictly a farmers' organization, as is generally supposed, but is deliberately designed as a farmer-labor organization. How this coalition worked in the campaign of 1920 has been told in a previous chapter.

The League leaders are of the radical labor groups rather than of the farmers. Arthur Le Sueur, who was the executive secretary of the League for a long time, was an attorney whose time previously was principally taken up with a defense of the I. W. W. J. O. Stevic, state manager for the League in Kansas, is a radical labor leader, having for a long time held the position of president of the Topeka Industrial Council. The radicals of the Chicago Federation of Labor have sought to cement the class groups by

depositing all union funds in the Non-Partisan League banks of North Dakota.

If the League had been as strong in Kansas as it was in North Dakota or Minnesota, the Industrial Court probably would have met with stiffer opposition. D. C. Dorman, a League leader, wrote J. O. Stevic a letter in which he admitted that the League had met with stiffer opposition in Kansas than in any other state, and this opposition had been functioning since early in 1917 in the shape of an informal organization known for convenience as the "Kansas Antibolshevik Campaign." This organization, which, functioned by means of public speeches, pamphlets, and newspaper-publicity service, conducted a campaign of education on the subject of radicalism, explaining the fundamental doctrines, not only of the Non-Partisan League, but of the I. W. W. and left-wing Socialists. This organization checkmated the radical organizers at every turn. The people were warned not to use violence, but to follow the simple facts and be prepared. At first the people generally thought the antiradical apostles were fighting a phantom, but in a year or two they began to see the results.

One of the fruits of the campaign was the enactment of an antisyndicalism law, which kept Kansas entirely free of incendiary "wobblies" during the 1920 wheat harvest. In this case Kansas demonstrated the wisdom of preparedness. It did not wait to lock the barn door until after the horse was stolen.

The people of Kansas are well educated on the subject of radicalism. They know just how to distinguish between radicalism and progressivism, and they are as progressive people as there are in the country.

This situation is explained in order to clear up still further the impression that Kansas being an agricultural state made the Industrial Court law any easier to enact. The people of Kansas were ready for it, and they knew exactly why they were ready for it. The opposition in the campaign came from misinformed farmers just as freely and heavily as from misinformed laborers. Both elements were following the false leadership of radicals.

When the coal strike came on the people of Kansas became very restive. For the first time they were brought squarely up against a strike that actually threatened their lives and health. Kansas produces more than enough food to support itself. It has never had any serious transportation troubles, and its wagon and automobile roads are unusually good. It had never had a shortage of clothing. With a large supply of natural and planted timber and fields of oil and gas it might have prepared adequately for a fuel famine if there had been sufficient warning. It was pretty largely on a coal-using basis, however, and when it suddenly found that the bins were empty it began to take a very poignant notice of things.

That is why the legislators who came to Topeka

in January, 1920, with a vivid realization of an unaccustomed peril, were practically unanimous upon a settled conviction. That conviction was that it was the unquestionable province of the government to protect its people from death or suffering when an industrial dispute curtailed vital supplies.

If the law were really antagonistic to labor it would involve other interesting questions, but the law is not antagonistic to labor. It is helpful to labor. Therefore the legislators of Kansas felt, as the legislators of all other states should feel, that they were doing labor a real kindness in enacting a law that would eliminate much industrial strife without causing labor to forfeit any of its real liberties.

When the special session of the legislature was called, both labor and capital began to fight the proposed law, the main features of which were hinted at in the call for the session. The employers called the proposal "state socialism." The radical labor leaders denounced it as "involuntary servitude."

When the members assembled, an amusing controversy was held between the radical and conservative elements in the union-labor leadership. The radicals wanted to bring to Topeka fifty thousand laboring men and have them march seven times around the Capitol building. Some one evidently saw the unfortunate comparison involved in likening the Capitol building to Jericho, however, and the conservatives prevailed in this instance. It was decided that the organized-labor interests should appear

with their lobby under the leadership of the officers of the four railway brotherhoods.

All the union-labor leaders announced that they were making the fight against the Kansas law by order of their national organizations. The operators and employers appeared through their lobbyists and attorneys.

The bill had been prepared in conference with the judiciary committees of both House and Senate before the legislature assembled. When it was introduced in the House, the lower branch of the legislature, declining to send it to the Judiciary Committee, considered it in Committee of the Whole. The Senate sent the bill to its Judiciary Committee. The House held daily meetings to which the senators were invited, and in which the objections of the labor leaders and the representatives of the employers were heard.

A number of national labor leaders came to discuss the proposals. The four brotherhoods were presented by one of their officials. Frank P. Walsh was the most notable representative, of course.

Mr. Walsh is a spokesman of that element of labor usually called radical. He is liberally quoted by the I. W. W., and he professes a warm admiration for Alexander Howat, the Kansas miners' union chief.

The situation was dramatic, especially in the late afternoon of the short winter day on which Walsh appeared, as the reddening rays of the Kansas sunlight streamed in upon the gathering of lawmakers

who were earnestly, and it seemed prayerfully, testing out every argument made by the distinguished labor attorney. At the close of his long address he was answering questions put to him bluntly, but in kindly spirit, by keen legislators—typical representatives of a cross section of the American public. The central issue was adequately dramatized.

On this day—the opening of the period of argument—the chaplain, a veteran preacher, seemed to instill unusual solemnity and prayerfulness into his invocation. He read from the Bible, “Righteousness exalteth a nation, but sin is a reproach to any people,” as the assemblage stood.

On the rostrum was the typical labor lawyer—suave, adroit, eloquent, sometimes couching radical appeal in plausible terms. On the floor were the senators and representatives, sitting in silence and listening with the closest attention, analyzing the speaker’s argument. In the gallery above were several hundred representatives of organized labor. These applauded the men on the rostrum often and vociferously.

The state of Kansas is the state of the American Union which more broadly and specifically delivered an invitation of this kind in its constitution than perhaps any other state [said Mr. Walsh in his opening remarks]. For in the Bill of Rights, contained in the opening clauses of the constitution of the state of Kansas, the declaration is made that the people may always peaceably assemble for the purpose of instructing their representatives as to their wishes, and for the purpose of communicating their desires to the government of Kansas and every department thereof.

He visualized the situation correctly. The glory of American free speech and free and unhampered legislation was being exemplified in a peculiarly convincing way. There never will be any accusation that the Industrial Court law was rushed through without giving the opposition a hearing. The opponents of the bill had by far the longest time allowance in arguing the proposition.

Following are some of the high points of Mr. Walsh's address:

My challenge in regard to this bill is this: Are labor unions beneficial to the state? Before I conclude my argument I hope to present the thought that the passage of this bill means the destruction, the striking down of the labor movement in Kansas, as it is known in the United States to-day.

The struggle is not between those who have and those who have not, but let me mark, if I can, the thought that the struggle in modern-day social and industrial civilization has been, and is, to-day, between the actual producers of the community and those who live off the actual producers, without a proper exercise of their own. It is true in the history of mankind; aye, it comes from above, that no human being can be intrusted with arbitrary power. I challenge the whole history of the world, the story of every autocrat that has ruled, that when he came to the point that nothing was so powerful, nothing too strong to stand in his way, he fell before the indignation of men through the force or idea of some humble man.

Now let us look at it first from an economic standpoint. In 1886 many of us lived in this country during one of the most terrible strikes that ever took place in the Southwest—the Southwest Railroad strike. At that time I had the privilege of being a clerk in the general offices of the Missouri Pacific. Mr. Hoxie was general manager of the Missouri Pacific, and a strug-

gle was being made by the employees to have a hearing, but Mr. Hoxie refused. The occupation of a switchman in those days was a little above that of a tramp. He made fifty dollars a month, worked twelve to fifteen hours a day, continually risking his life. A gentleman is here protesting against this law who was a conductor running out of Kansas. He can recall the day when his salary was fifty dollars a month. You will recall, during those same days—for those were the days before these so-called powerful unions came into existence—that the typographical union was struggling for recognition against the powerful press of this country, the chief strikes being against one of the leading Kansas City papers and the St. Louis *Post-Dispatch*. They were making demands on their employers, who declared they would operate their own business in their own way. The employers refused to meet the men, and the strike came on. In the great railroad strike property was destroyed, lives were lost. Timorous men believed the structure of government was really threatened. So far as those men were concerned, they were too weak. They were defeated so far as the management was concerned, at a great cost. Some of them, good men, were blacklisted by every railroad all over the United States. Stockholders lost millions of dollars, and the executive management of the railroad was disintegrated. The strike was a great loss to the men and a great loss to the state of Missouri.

But let us see. Since that day there has been no railroad representative who has refused to meet a regularly organized committee of a regularly accredited union. Those men, those pioneers, were enabled by that struggle to gain a hearing in what was then the Supreme Court of Industry, and so, while they have not gained all they believe they should have, the pay of switchmen or of conductors or engineers has advanced, until those men have been able to take their place in citizenship.

The American labor movement is the one body in the United States that acts, not only in its own organization, but in its relations to the state and to the public, with the greatest degree of altruism. Within their own organization they are banded together so that all may have a better life. I find them side by side, not only giving up their time, but also their substance to

the community, not only to raise their families, but to perform those duties without which the state must languish and die, so that these men, who at the time of the Southwestern strike, deplorable as it was, were little above the status of slaves, because they were held down by their economic necessities, are now able to establish decent homes.

The proposed bill is not a new one. It was presented time and again by the legislative bodies of this country and the legislative bodies of Europe. That it contains in its four corners all of the vice that we believe exists in compulsory arbitrations without any of its virtues, is my firm conviction. Its object is desirable—the public welfare, the continuance of occupation, etc. But when we get to the *modus operandi* for carrying out that operation, it is absolutely lacking in this bill, and in its essence this bill is a blow at the home of every producer in the state of Kansas and every man dependent upon them.

I believe that in its essence it is unconstitutional. The Thirteenth Amendment of the Federal Constitution provides that no slavery nor involuntary servitude, except as the punishment for crime, where the party shall have been duly convicted, shall exist within the United States. In passing upon the Constitution of the United States, the Supreme Court of the United States makes the following observation:

“The inciting clause of the Thirteenth Amendment was the emancipation of the colored race, but it was the denunciation of the condition, and not in favor of one particular race of people.”

And as I look for an interpretation for involuntary servitude, from the legal standpoint, I can do no better than epitomize, as I have attempted to do, the decisions of the Supreme Court of the United States and of the other courts of this Union into a few words, that I submit for the challenge of any gentleman that may be opposed to this definition. It is founded upon the declaration of Mr. Justice Hughes, in a very well-considered case, and applied to the other cases throughout the Union, for epitomization:

"Involuntary servitude is any control by which the personal service of a human being is disposed of or coerced for another's benefit."

That does not mean that the man must be absolutely under servitude so a master can say to him, "You shall not leave here," or, "You must leave here," but it is any control by which his personal services are disposed of, of course, without his will, or coerced, meaning not by the lash of a whip, but coerced by the operations of the state, coerced by one man, by a majority of men or by a minority, or in any state, or in any subdivision of society.

The beginning of all genuine liberty starts with the liberation of the actual producer, giving the actual producer the opportunity to get the fruits of his own toil to the greatest extent compatible with the organization of society and the keeping of life and health in society, as a whole.

The bill proposed here is couched in language that at first blush, because so much is given to the objects of the bill, causes the average person at a glance, as it did me, to believe that perhaps there was something of merit in the bill. When I came to analyze it in all of its provisions, and I can speak now not only in the representation which I hold here to-day, I can speak as an investor in your state. . . . I can speak as a man of family . . . from that standpoint I say that this bill, from the conceptions which I have of American citizenship and the progress of our people, is absolutely at war with our spirit.

I believe in the greatest expression of individualism. I believe those things which the absolute necessity of the community demands should be operated by the state, should be so operated, or by the municipality, but that every possible freedom should be given to human ingenuity and human activity, and that goes to the very heart of this question that I am trying to discuss here to-day. You cannot look upon the labor of a human being as a commodity. You cannot look upon it as being subject to contract, such as capital is, or such as the fruits, the concrete fruits of labor become dead material, but you must look at it

as human life. You cannot barter away or contract for the creative impulse, you cannot contract or barter away the aspiration that the man has for contact with his own family, you cannot barter away what is life, the laughter and the tears, the joys and sorrows of human beings, or the efforts of human beings to make the world more beautiful, and to advance the race.

In order to continue production, this Industrial Court, appointed by the Governor of this state, is empowered to order and fix rules, regulations, and practices, to govern the operation of industry. Now, leaving wages and conditions aside for the moment, what is this body supposed to have the power to do to these industries? I say to you gentlemen, and I say it deliberately, it is in Section No. 16.

"After notice to all interested parties, and investigation, as herein provided, to make orders fixing rules, regulations, and practices, to govern the operation of such industries, employments, utilities, or common carriers, for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries, employments, utilities, or common carriers."

They have the right, then, under Section 16, to order and fix rules, regulations, and practices, to govern the operation of the industry.

Now, this is no new idea. I am going to lay this thing down as a fundamental proposition, on Section 16, and I challenge an investigation of the operation of laws in Germany and other places where it has been tried, and in the researches of students throughout all history, if that is not state socialism in its most odious form, and it is not the first time it has been tried. . . . It is the idea that the state, in order to conserve the public welfare, may take charge of the actual operations and activities in the production and industry, and operate them itself.

All of the great strikes of history, where there was loss of life and destruction of property, have been those where men, like in

Youngstown, Ohio, lived under conditions so horrible, and like the men did in Chicago, that without leadership, without thought, if you will, they struggled to one place and they voiced their awful feeling of suffering and degradation without proper leadership, and unadvised, many of them unfamiliar with our institutions, rose up, and it cost the loss of life and property in an effort to get together so their own demands might be heard, and I say to you gentlemen of this assembly with all the feeling that I am able to muster, that I believe there would not have been an industrial dispute worthy of the name in this country, causing the loss of a dollar's worth of property or a single precious life, if men recognized the rights of each other, recognized there could be no mastery in industry if the co-operative process was recognized, that if the employer was not just he would suffer a great loss because his men would not work for him, and that the men should recognize that if they did not keep continuously in the employment themselves, then their families would suffer, because they would have no employment, and the employer, exercising, as he does, in every state in the Union, the free right of collective bargaining, and right to select his own agents, financial and sales agents, the right to make his own contracts, in his own way, would have accorded to the workers to organize in any state in the Union, and make their bargains through their chosen representatives, which they selected themselves, with the idea that there was no mastery, but there was co-operation . . . the country would have gone generation after generation without any labor dispute.

Now, then, is it desirable to have labor unions? If it is, then do not pass this law, because by passing it you strike down every labor union in the state of Kansas, and you draw a steel ring around your borders which says, "Labor unions cannot come in." The object you give for Section 17 is a good object; production shall not be hindered or delayed, that the public shall not be made to suffer on that account; and therefore certain things are made illegal. Now let us understand, if we may, the question of strike or no strike. I have often thought, as I have tried to observe and study these things, that it is very unfortunate—

the terminology and phraseology that are used in regard to industrials, and especially in regard to unions. I have often thought that the terms and phrases must have been gotten up by the enemies of unions. The word "strike" implies that it means an effort of some kind—there is something in the word that implies violence. Suppose we follow the history of it, and said it was the right of the individual to quit work. Nobody would gainsay that, it is not gainsaid in this law. Or, if we said that when he quit work he had the right to say to his brother, "We are being imposed upon, we are not getting enough to eat, we are building up an immense fortune for this man, we shall ask—we do not ask much—but we ask a minimum living wage," no man could object to that. I do not know a gentleman in this assembly that does object to it. There is annual, continuous operation in some of these great concerns. Hundreds and thousands of men have twelve hours a day, and twice a year, twenty-four hours a day without cessation. You cannot believe it; and I did not until I was brought face to face with it. Do those men not feel that they have been imposed upon when they see other men also in need, their children suffering and crying for bread, and their wives seeking for some kind of happiness and comfort in this life? They will say, "This concern made a profit during the war of 5,000 per cent, and here we are without enough to eat. Let us go and meet in a hall, and get together and present our grievance and tell them how it is." If you think I am over-drawing this I shall be delighted to give you the names, and at least a reference, so what I say can be followed up, in the interest of truth. They go together in a hall, in their own little meeting place—a dozen, two dozen, fifty—they discuss their grievances. It is what you put in your bill of rights. It is why I am here to-day as an American citizen, why I come with a strong feeling of confidence, and why these gentlemen are sitting in a position of honor. . . . I saw them in Youngstown, whole communities practically dying in pain and anguish. This great steel industry was piling up this great surplus that has made it the wonder of the world. Blinded, and with eye diseases, these men get together and try to present their grievances. Would any gentleman in this assembly deny them that right? I say you would not. You would not deny them, because you are American citizens,

because you know the true meaning of your Constitution, you know the peaceable assembly to redress grievances.

Now, when the Clayton Act was passed, there was much discussion; the greatest employers of this land, and the best legal talent that could be employed, presented the various phases of this important question to this legislative committee of the Senate and House. Like action was taken by the labor unions of this country, so the Clayton Act, after deliberate consideration, exempted all foreigners and labor organizations from the operation of the coercive parts of it. They were separated out, because they recognized the activities of these men consisted of the personal service which they rendered to the industry, and that any inhibition on their right to quit individually or in concert was an assault upon the Thirteenth Amendment of the Constitution of the United States. I had the great privilege of being present during a great part of that argument, and furnishing a small part of it, and the deliberate action of the lawmaking body of the United States of America was centered upon this point—the question I am attempting to convey to you to-day—that any inhibition on the act of a human being, so far as any disposal of his own labor is concerned, or any coercion, is a violation of that clause of the Constitution of the United States and of the various states, that preserves us from industrial servitude, except for crime, and then after conviction by a competent court.

At the conclusion of Mr. Walsh's speech he was questioned closely by the legislators, all of whom showed their familiarity with the facts at issue.

One rugged Scotchman, with a burr on his voice, arose to inquire why the miners wanted a six-hour day, saying that in his county the farmers had experimented with some of the men from the mines as harvest help, finding that they were unwilling to put in a full day.

Mr. Walsh then told of the hardships of mine work, but was interrupted by the legislator, who said, "But, Mr. Walsh, I am a miner myself; I have worked in the coal mines in the old country." And so it went. The temper of the legislators was determined, but good-natured and tolerant.

Mr. Walsh occupied a whole day—seven hours in all. The members all remained during the discussion and gave him the closest possible attention.

The next speaker was J. I. Sheppard, attorney for the Kansas Federation of Labor, and for a time attorney for the Kansas miners' union. He is a kindly-faced, white-haired man, with a large personal following, and a reputation for liberality of views combined with an ardent love for the labor cause in general.

He pictured the hardships of labor and the needs of the miners, and pleaded for a spirit of brotherhood and the application of Christ's teachings. "What we should do is to do away with the tooth-and-claw method and adopt the Golden Rule," he said. "I am against strikes. I think we should find a substitute for them." He did not agree with Mr. Walsh that this sort of legislation had been attempted in European countries. He saw in its high purpose an advanced step, and advocated its passage without the penalty clause. He commended the action of the Governor in the coal-strike proceedings.

Following Mr. Sheppard was W. L. Huggins, now judge and presiding officer of the Kansas Court of Industrial Relations. He was one of the chief

framers of the bill and had a comprehensive knowledge of its intent and detail. Extracts of his speech, taken direct from the stenographer's copy, are given herewith, to give a more understandable impression of the discussion:

With the first speaker I was a little disappointed. I think it can be inferred from what was said that he wanted to praise the government under which we live; that he wanted us to stand by and support the government of Kansas; that he believed in this legislature and believed in organized government; and that his first duty as a citizen was to the government. But I don't believe he said it as plainly as I would have liked to have it said, because when asked from the floor, "Do you approve of the methods by which the four brotherhoods whom you represent forced the passage of the Adamson law through Congress?" he answered in the affirmative—that he did stand for those methods. If you lawyer members of these two bodies have not read it, you will read it. Chief-Judge White's opinion in that Adamson law case, in which he places the constitutionality of that Act of Congress it seems to me, at least, almost exclusively upon the proposition that Congress was compelled to do that to prevent a nation-wide strike which would have paralyzed the industry of the country and would have brought suffering to every home in the land. Is that government by the majority? Is that democracy? Is that government of all the people, by all the people, for all the people? If it is, gentlemen, I don't understand the term "democracy."

Then again he was asked the question, "Do you stand for the methods adopted by the striking miners in Kansas when they refused to respond to the call of the Governor and refused to permit coal to be produced in the face of severe winter weather and a shortage and actual suffering?" And he said he did. If I understand democracy, that is not democracy, and we might as well speak plainly, gentlemen.

I have been asked by several members of this legislature a question in regard to this bill, and I want to answer that question.

In fact, that question concerns a certain point in this bill which hasn't even been mentioned in this discussion.

What does this bill offer to labor? In the first place it offers a tribunal before which labor can go with any grievance which it may have—that is, labor, in any of the industries described, and when it approaches that tribunal nobody can say, "Where is your bond for costs?" The poorest laborer in the state of Kansas can walk into this proposed tribunal with his pockets as empty as the poorest man on earth, and not a word is said about it. And further than that, as the matter proceeds, the state of Kansas, in the exercise of that Christian charity and that humanitarian principle that have been so highly spoken of here, the state of Kansas, I say, provides that poor laborer with expert advice and expert assistance; it allows him to go wherever it may be necessary that he should go, to take every bit of evidence that he wants to take without his employing an attorney, without his paying a dollar for traveling expenses or without his employing an expert of any kind. The state of Kansas says to him, "We will get your evidence for you," and thereupon, with a staff of well-paid and well-chosen experts, it takes up the investigation of that dispute, whatever it may be, and develops his case for him free of cost.

Now, the state does more than that. When the matter comes up for trial before this proposed tribunal, the state arranges matters so that the laborer doesn't have to bring any kind of a lawyer, high or low, into that court. There is the staff paid by the state to develop all the facts; this bill enjoins this tribunal to do all the things necessary to ascertain the facts and the truth of the case. So the laborer comes into court protected by the state, under the law, and offers his testimony and submits his cause.

But, another thing is done for him. The bill provides that the evidence shall be taken in shorthand by a reporter paid by the state, and that evidence shall be transcribed in duplicate, one copy of which shall be filed in the permanent records of this tribunal and the other which shall be used in the supreme court of the state of Kansas. If the poor laboring man concludes that he has not received justice in the Court of Industrial Relations, his case is prepared for him, and he goes up to the supreme court—the best court in the state of Kansas, and as good a court as

## 82 THE PARTY OF THE THIRD PART

any in the United States of America—without cost and without having to put up security for costs.

It is intended to mean that any employee can quit his employment at any time for an honest purpose, but that if he conspires and confederates with others to quit, it must be for a lawful purpose and not an unlawful one. There is nothing in the bill that prevents labor from holding a meeting in a hall for discussing its wrongs. There is not a line in this bill that penalizes a man for attending such a meeting. It is only when done for the purpose for which that coal strike was called. It is admitted here that that strike was called for the purpose of so afflicting the people of this state that the people would compel the coal operators to do something they didn't want to do. Labor, by that coal strike, made hostages of the people of Kansas. Does this law make a labor union unlawful in Kansas? I say, "No." Every honest labor union, every labor union that is composed of loyal, upright American citizens who are willing to abide by the laws of the land in which they live, may continue its work.

There are some things that I will not debate with any man, and one of those questions is the question of obedience to the law of the land. That is not debatable. Loyal, patriotic American citizens will obey the law from choice, and the other kind will be compelled to obey it. All this talk about inability to enforce the law in Kansas is nonsense, gentlemen. This is a land of law and order, and when this law is enacted it will be enforced; and, as the gentleman from Chautauqua County says, "If it is necessary to enforce it by a penalty, the penalty ought to be somewhere where it could be reached." I am raising a family, and I am the oldest son of a large family, and I was taught the Golden Rule and the Ten Commandments. There was a time when I could repeat the Sermon on the Mount, but please don't ask me to do it now. I believe in all those things; but in the same Book that gives us the Golden Rule and the Ten Commandments and the Sermon on the Mount is a passage which an old Baptist friend of mine, who believes very strongly in immersion, used to quote often, and to this effect, "Whosoever believeth and is baptized shall be saved, but whosoever believeth

not shall be damned." That is the penalty. And he wasn't talking about horse thieves, either—he was talking about me and you and Uncle Jake,<sup>1</sup> the good old soul.

This legislature has always been fair to labor, and I believe if Uncle Jake Sheppard had thought of it he would have told you so in his speech. Labor has been before this legislature and its representatives from time to time, and we have on the statute books of this state a labor code which, if not up to date, ought to be brought up to date. All that labor has to do is to ask this legislature for anything fair, and I think I speak almost with authority when I say that the legislature will grant anything that is fair. We have our mine-inspection laws, our labor laws, our safety-appliance acts, our workmen's compensation act, our welfare commission, and so far as I know no important and fair law has been asked for that hasn't been granted.

Now, is this an antistrike bill? It certainly is not, and it is wrong to call it so. At least, it is not an antistrike bill in the sense they try to make it out to be. It does not prevent any man or set of men from leaving their work. It does say that when you quit your employment you have to quit your job. That is all it says. It says to the labor union: You can't eat your cake and have it. When you quit, you quit. And it says, when you quit, if somebody else wants to come and work in your place, you can't prevent him from doing it. That is all it says, and if the language isn't as plain as the English language can be made on that point, I know that I speak for Governor Allen when I say he wants it made plain. No man is required to work in any particular employment for any particular length of time unless he wants to. The idea that the state of Kansas would even seriously consider a bill which meant slavery for the workingman! You would have thrown this bill out of the window the first morning; you would not have let it be read a second time; you wouldn't have referred it to a committee; you wouldn't have listened to a man who proposed it if it had had a line, sentence, or syllable in it that hinted at slavery for the workingman. . . .

---

<sup>1</sup>J. I. Sheppard, attorney for the Kansas Federation of Labor, who preceded Mr. Huggins in the discussion.

Now the question arises: Can you enforce the order provided for in this bill? That is a subject I won't discuss at great length because the lawyers in this legislature will take care of that. I believe it can be done, and I base my opinion not altogether upon adjudicated cases—I base it primarily upon this fact (and I believe every man present will admit it is a fact), that in every Anglo-Saxon country in the world, every government (this is an Anglo-Saxon country because our laws and institutions are founded upon the English common law), every permanent addition to the body of the law, every enactment which has become permanent and remained, has grown out of some great public necessity. In Anglo-Saxon countries the law springs from the common level of the general public. In monarchical countries it comes the other way—from the top down. In our country it comes from the bottom and springs up, and every permanent law takes root in human necessity as the tree takes root in the soil. Let me illustrate briefly. Two hundred and fifty years ago Sir Matthew Hale, one of the great judges of England, later lord chief justice, wrote a paragraph concerning public use which has been said to be the greatest expression of its kind that ever was printed, and it was about as follows: He said that if the king himself (mark that word "king") is the owner of a public wharf to which all persons must come to unload their goods, even he cannot make excessive charges for wharfage, cranage, and the like, because the wharf, the crane, and the other loading facilities are public utilities, and are no longer to be regarded as private property only. That was a long time ago, but that has been the law in every English-speaking country of the world ever since. Never has it been gainsaid. We have extended the principle—extended it in Kansas a good many years ago when we passed the law creating the railroad board; extended it farther when we created the Public Utilities Act, so that we have now not only fixed the price which the public must pay for these things, but we have compelled the continuance of the service, compelled the railroads to run their trains—to run continuously; haven't allowed a road to take off a freight train in order to boost the price of freight; haven't allowed an electric-light plant to shut down its service. Now we propose to go just one step farther than that, and here is where we get the different opinions

of lawyers. We lawyers think nothing is constitutional unless some court has said it is constitutional, but if we should stop where the court stops we would never be able to make any progress. Some bold spirit has got to go farther. Some legislature has got to pass the law before the court can tell us whether it is constitutional or not. So, in this bill, we are stepping out a little bit farther, and we are saying that not only shall the railroads be compelled to furnish service, not only shall the electric-light company be compelled to furnish its service, and the water company, and the telephone company, but because of the very necessities of the case the people must have food, clothing, and fuel. Therefore, we say to the concerns which furnish those products, the bare necessities of life: "You shall not cease operations and let the people go hungry. You shall not cease operations and let the people freeze."

But what kind of a government did they set up down there last fall to induce Frank Walsh to say he is in favor of a government which says, "My first duty is to the union; my second duty"?—Well, it didn't go that far; I don't know whether it would admit it had any duty to the state or union—he said, "My first duty is to the union." He doesn't get that in the Sermon on the Mount, nor in the Declaration of Independence, and he doesn't get it in the Constitution of the United States nor the state of Kansas. I don't know where he got it, but I know that that, in principle, is Bolshevism, and I am not afraid to call it by its right name.

What's the matter with American labor? It is tainted with Bolshevism. Just that, and nothing more. The radical leaders, the ideas imported here from Russia, have all got into labor, while the loyal element is inarticulate.

Now I want to say this: everybody claims he is the friend of labor. I am not going to parade myself as any special friend of labor. Nevertheless, I am a sincere friend, and on that account I want to give to labor and its representatives just a little good advice. Put out the radicals, and if you can't do that, come out from among them.

Here is a bill that attempts to remedy a great abuse. Now, I am not going to tell you this is going to bring about the millen-

nium, but if this bill becomes a law, it puts into effect the very best force the state can furnish, free of cost to the laboring man, to investigate and adjudicate all those wrongs he has been suffering from, lo, these many years—a bill which provides for the very thing that Uncle Jake Sheppard and Frank Walsh were talking about and which they hoped to have passed by resorting to conciliation and arbitration within the industry. There isn't a line, a word, nor a syllable in this bill, from start to finish, that will prevent a situation arising similar to that in that big shoe factory which Uncle Jake told us about this morning. I don't know why he introduced that point unless he was preaching a sermon, but it hasn't anything to do with this bill. There is nothing in this bill that prevents the laborer and the employer from getting together on any kind of a proposition they want to put into effect. And in fact there is a strong urge in this bill to induce that kind of a thing. I will tell you what it is, and I think you will all understand. It is this: You know, you lawyers, how many disputes between private individuals are settled because neither side wants to incur the expenses of a lawyer. In fact, I never found anybody who wanted to pay a lawyer. You know how many disputes are settled between neighbors in a friendly way because they don't want to go to the expense of a lawsuit. And I believe every lawyer in this body would agree with me that far more cases are settled before they get into court than are litigated. I believe it is the experience of every lawyer. People in general don't want to go into the courts to waste their money on litigation, so they get together and settle it.

Suppose that a dispute comes up between employers and employees in some of these industries. Perhaps there are mighty good reasons why the employers don't want to go into this court, because every book, letter file, and record of any kind they have is liable to be brought before this court and is subjected to unfriendly eyes, at least to eyes not interested in the business; and more than that, it is made a public record. Now if employers have anything they don't want the public to know, they will not want that dispute with labor to get before this body. So labor and capital, to avoid litigation, will get together, formulate working rules, and agree on the manner of adjustment of

differences. They will appoint their working committees, and thus without any litigation labor will get its rights and capital will proceed to produce the things that are necessary for human life, and everything will go on smoothly. To-day there is no such motive as that.

So I say that this bill, while it won't produce the millennium, will encourage all those methods of conciliation and arbitration which Mr. Walsh spoke about, and which were discussed by the eloquent speaker this forenoon.

Now I am going a little farther, and say you have no right, no moral right, to take away the laboring man's right to strike, unless you give him a better remedy. You study that over, all of you. You have no right to take away the laboring man's only weapon unless you give him a better one. Why, I have lived in a community in which it was necessary to carry a revolver. I didn't like it very well, and didn't stay there very long, but it was necessary, and I carried one—because the law didn't protect me. It was down in Mexico, where they don't have any law of any kind. Now we have passed a statute in which we make it a crime for a man to carry concealed weapons. We have a right to do that as a state, because we have surrounded every citizen by the greatest protection that ever was known, the protection of Anglo-Saxon law, guaranteeing Anglo-Saxon liberty and justice. Consequently, he doesn't need his weapon, and we have a right to say to him, "You can't have it." We have never given labor a weapon of self-defense, so we have to let labor carry a gun—that is, the right to strike; and if you can't give labor a better weapon, for God's sake don't take the only weapon it has away from it. You are offering labor a weapon which makes the old weapon unnecessary. You are offering it a legally constituted tribunal composed of impartial judges, and all the machinery necessary to give free and even-handed justice, with power to enforce against the employers the duty of paying a fair wage, of granting fair hours of labor, and good, moral, and healthful surroundings, while they are engaged in that labor; and the bill says so in that many words. And when you have given labor that other weapon, when you have given it a court to which to go and surrounded it by the pro-

tection of law, you have the same right to take away the weapon of the strike as you have to make a law preventing me from carrying a concealed weapon; you have gone farther toward the establishment of industrial peace; you have gone farther to insure to labor a fair reward; you have gone farther to insure to every laboring man the right and ability to bring up his family, to educate his children, and to give them good, moral, and educational surroundings, than any state or nation has done since the founding of society. And Kansas again has led the world.

Any man who says, "My first duty is to my union, or to my church, even, or to my lodge—I owe no allegiance to the government of the United States nor to the state of Kansas that I will not freely set aside if my union, lodge, or church tells me to"—no man who believes in that is a good citizen. No man who acts in this manner should be granted the protection of the law which he despises, and no penalty which you can impose upon that kind of a man is too severe.

I want to tell you another thing. If we believe in democracy, if we believe in the perpetuity of that government for which the fathers of the Revolution shed their blood, if we believe in the reunited Union which sprang from the bloody fields of the Civil War, if we believe in making the world safe for democracy, if we believe in making democracy triumph in the United States of America, we have got to fight. We can't do it by folding our hands and keeping our mouths shut. Frank Walsh says there is no politics—no labor union is indulging in politics—but I have a letter in my pocket which I shall read in part. It is addressed to one of the members of this body, signed by what purports to be a committee of the labor union, "We have also resolved not to support statesmen in the future who will indorse or work for antistrike legislation." That is politics. But it doesn't get them anywhere. I believe, gentlemen, that even the senators and representatives who come from the regions most affected will vote their convictions without regard to that threat. But it is politics, and can't be gainsaid. I don't know what they will do in Missouri. I wish Missouri well. I don't know what they will do in Arkansas, nor Colorado, but I believe I know what

Kansas will do when it comes to a question of surrendering American democracy to the Soviet, or fighting for it—Kansas will fight.

About the time that Mr. Huggins was speaking in the House the attorneys for the employers were presenting their objections before the Senate committee.

Representatives of the public were given about a half a day in all. One of the best known of these was William Allen White, the widely known Kansas author and newspaper man. While attending the Peace Conference at Versailles Mr. White was appointed delegate to the proposed Prinkipo conference with the Soviet government. It was a far cry from Prinkipo to Topeka and from Sovietism to so-called antistrike legislation, but Mr. White's address showed the broad sanity of his philosophy, which is really always the accomplishment of the greatest good to the largest number and the protection of orderly functions of honest government.

Mr. White is friendly to labor even to the point of being accused of extremism at times, so his address is of especial importance.

He reviewed the evolution of government supervision over private affairs and quarrels, and declared:

In ten years the labor unions will look back to this step of the Kansas legislature as the day that heralded the emancipation of American labor.

He said further, in part:

As civilization grows, it grows more complex. Civilization is the constant enlargement from the more simple form to the

more complicated form, and it will never return to the simpler form. To-day we are taking in Kansas a step which must be taken throughout the world. To affect with public use all those interests which are concerned with productive industry, we are in effect making them public utilities.

Every age, every century, and in these modern times every decade, sees some business or interest formerly considered private business or private interest set over in the public interest. Two hundred years ago, when a gentleman had a quarrel with another gentleman, it was supposed to be a private quarrel, which should be settled under a private code called dueling, but too many innocent bystanders got hurt and dueling was stopped in the interest of the public. Time was when a quarrel between a slave and his master was a private matter, and the master had private rights over his slave. That was stopped. Time was when a man's money invested in bank stocks or railroads was considered private money. It was considered an infringement of private rights to interfere with that money, but government affected all money invested in banks and public utilities with public interest, and regulated and controlled that money in the interest of the public and took away personal rights for the private good.

The pirate's right was once a private right, but that right was removed for the public good, and when labor and capital engage in a brawl which threatens daily processes of civilization, we are taking away the right to that brawl and saying the quarrel must be settled in the public interest.

The public, in establishing wages, will be interested, not in labor as a commodity, but in labor as a citizen. The public is interested in capital chiefly to see that capital gets justice; that it has a fair return and a profit sufficiently large to encourage enterprise, which is our God-given gift—the gift which distinguishes America from all the world; and by trusting to the public—that is to say, trusting to the organized forces of society in government—to adjudicate wages, capital will find a just and equitable bureau or court or commission, or what you will, and in ten years capital will regard this day as the beginning of a new era in its organization. We are not trying to throttle capital and labor in Kansas, but to emancipate them from their own

strangle hold upon each other and to establish an equitable and living relation between them.

Dr. E. J. Kulp, a Topeka minister, also appeared before the legislature to speak in favor of the bill, and Dr. A. M. Brodie, a widely known minister of Wichita, was also very active in its behalf.

No law upon the statute books has received the intelligent interest of the legal profession to the extent that the Industrial Court law has. Many leading lawyers of the state were consulted at the time the bill was going through its initial preparation.

The two houses acted deliberately, and when the law was finally passed there were only seven votes against it in the Lower House and four votes against it in the Senate. In the 1920 primaries some of the men who voted against the bill were defeated for renomination, while others declined to run. The senator from Alexander Howat's own district who voted against the bill in the special session was defeated by a Pittsburg business man, who conducted his campaign upon a platform indorsing the Industrial Court. There will be even less opposition to the court in the future legislatures than there was in the special session.

The bill became a law after seventeen days of consideration. Democracy had functioned in an orderly and distinctively American fashion.

## VI

### THE CARNEGIE HALL DEBATE

EVEN while we were discussing in the special session of the Kansas legislature the possibility of a law creating an industrial court, Samuel Gompers, president of the American Federation of Labor, was quoted as warning the Kansas legislature not to pass any law which would abridge the right of strikes.

His representatives in Kansas joined with the representatives of the four American brotherhoods in a program of resistance to the law, and gave as their reasons that they were directed to make this fight by their national organizations. Both the representatives of the brotherhoods and of the American Federation stated that their instructions were to fight the law and that they were informed that they would have whatever assistance could be rendered through the national organizations.

When the law had passed, the next order which went out was that the Kansas law should not be allowed to spread to other states.

For nearly three months thereafter President Gompers spent considerable of his time visiting cities

and legislative bodies to which I had been invited for the purpose of discussing the Kansas industrial program. Whenever I appeared before a legislative body in New Jersey, New York, or Massachusetts, Mr. Gompers usually came the next week. He began to assail the law even before he had studied it, and my belief is that he never gave it a moment of sincere or impartial consideration. His remarks about the law and its motives were uniformly partisan and immoderate.

So there had been going on between us a controversy which resembled a joint debate. Therefore, when an opportunity was presented to meet President Gompers at Carnegie Hall, New York, I was very glad to embrace it, not that I believed I could affect his viewpoint upon the situation or the viewpoint of many of his fellow officials, but because I hoped that we could dramatize the controversy sufficiently to inspire the public to study with intelligent concern the program we were offering in Kansas.

The interest in the meeting was highly gratifying. I was told by my friends that more than twenty thousand requests for seats were refused because the limited space of Carnegie Hall had been exhausted. The first controversy with Mr. Gompers was over the title of the debate. He desired to limit the subject to a theme which he himself had phrased, "Has the state a right to prohibit strikes?"

I objected to this as being too narrow a limitation

upon the discussion of the entire problem of the industrial controversy, and submitted the following title: "The Industrial Controversy; President Gompers will present the remedy of the American Federation. Mr. Allen will present the remedy as proposed in the Industrial Court."

President Gompers refused to entertain this proposal, and I then notified him that I would be at Carnegie Hall on the evening of May 28th to discuss the entire industrial situation from any standpoint he wished, and invited him to be there. I knew he would be there. He had gained the right to open the debate through the drawing of lots. This explanation indicates the reason why the issue between us was not more closely defined.

By eight o'clock every seat in Carnegie Hall had been filled and a large crowd had congregated in the streets. By common consent the aisles were filled to whatever capacity the police permitted, and all the standing room was given over.

This audience, crowding the hall to its limits, remained for more than three hours and a half. There were three elements in the audience: those who had come committed to Gompers's ideas; those who were hard-and-fast sympathizers with the Industrial Court idea or any other idea that meant industrial peace; then there was an element, not very large, but open-minded, and not yet committed to the idea of the Industrial Court.

The thing that interested me most was this great

audience; its raw, tense emotions, its normal reactions, and yet, all things considered, its splendid self-control. It was a pent-up audience, in which anything might have happened and yet all of the explosions were free from damage.

The stage contained a distinguished audience of New York people, representing the best thought of that great city; and, sitting alongside, a distinguished audience composed of the officials of union labor, a body of men numbering several hundred, who serve as the national heads of the various organized crafts. It is doubtful if ever before, under one roof, were gathered so many national union-labor leaders and so many New York business and professional men.

At only one time did it seem possible that the audience might lose its self-control. That was when I was seeking to answer Mr. Gompers on the subject of the attitude of labor leaders during the war. The attitude of Mr. Gompers's following did not seem to be characterized so much by anger at what I said as by an uneasy determination that I should not discuss that phase of the question.

I believe the result of the debate was beneficial in that it attracted national attention to a controversy which cannot be settled until it has been dealt with out of the combined wisdom of a nation which has intelligently studied the problem and determined the national responsibility.

Mr. Gompers came to the debate with the mistaken assumption that my speech would be antago-

nistic to organized labor. He never abandoned that assumption. His three speeches were woven around an appealing recital of the history of organized labor and the many good things it had accomplished for its members. When he did venture away from this secure ground long enough to discuss the Kansas Industrial Court he showed unfamiliarity with it and established in regard to it many erroneous premises.

It is my judgment that the writing up of the debate had best be intrusted to some one whose viewpoint would be dissociated from the personal side of the argument, and therefore Mr. Elmer T. Peterson, who was present at the debate, and who has rendered indispensable service in assisting me to prepare various chapters in the book, has kindly consented to undertake the work.

#### THE CARNEGIE HALL DEBATE

BY ELMER T. PETERSON

In thinking of the Allen-Gompers debate two pictures are indelibly impressed upon my mind. One is that of a two-room suite in the Stilwell Hotel, Pittsburg, Kansas, which for two or three weeks formed the executive offices of the state of Kansas.

The weather was bitterly cold. Down in the lobby a number of men in khaki were walking about. One was a musician of note in my home city—an impresario, if you please. He was there as a member of the National Guard, and when I saw him he had a pistol strapped to his belt and was carrying a small bucket of water for the automobile he was driving. He was acting as chauffeur for somebody connected with the supervision of the volunteer mining.

Up in the northeast corner on the top floor was the executive office of Governor Allen, who spent half the time in the office

and half the time at the mines. The two million people in Kansas had their eyes and thoughts on that office.

There was a telephone, and his personal secretary, Mr. L. M. Hull, was busy answering calls. The office was in the coal business, and shipments had to be directed. When the Governor and his secretary both happened to be out I would answer the calls as best I could.

There was a little cheap table in one of the rooms which served as the Governor's desk. Over this desk passed some rather weighty matters. People coming in for a conference would sit on the bed if there were not enough chairs.

It was in this room that Governor Allen first expounded to me his theory of the Industrial Court.

Now another scene.

Again there was a two-room hotel suite on an upper floor. Mr. Hull was there. There were many telephone calls, and I helped answer them.

It was five months later, and this was in the Waldorf-Astoria, in New York. But memory persistently reverted to the little suite in the Stilwell Hotel, Pittsburg, Kansas.

Samuel Gompers, president of the American Federation of Labor, had just come from Atlantic City, where he had spent some time preparing his speech. He was at the Strand Hotel, New York. A special train had just come in from Kansas, bearing Governor Allen and about one hundred of his supporters.

There was something of a stir, even in sophisticated New York. A scintillant assemblage of writers, labor leaders, and publicists was to hear the debate between the two men. The stage was a marked contrast with that first mentioned. But the real issue lay in the suffering and the raw conflict of harsh weapons, back there in December, when the keen wind was blowing and the snow was sifting into the cracks of the windows of the room of the Kansas hotel. The debate was not to be so much of theories as of facts, so far as Governor Allen was concerned. And laws come out of facts oftener than they come out of theories.

When I reached Carnegie Hall it was time for the debate to begin, and there was a great crowd outside, in spite of the fact that the newspapers had announced that there would be no admission except by free tickets allotted in advance. A squad

of bluecoats held the people in check, and directed those who were to be admitted.

At the last moment the garment makers' union, two or three hundred strong, asked for the privilege of standing in the aisles, and this permission was granted. Those who have seen the garment makers congregate at the intersections of lower Fifth Avenue know how they love an argument.

I sat near one of them during the debate and talked with him at the close. He had enthusiastically applauded Mr. Gompers throughout the discussion, but he wore a thoughtful air and conceded that it was a fair presentation all around. The audience was quieter at the close than it was in the fore part of the discussion. The reasonable-minded union man seemed to realize that the Kansas effort was sincere, and that it contained no enmity to labor, but an earnest hope for a better day.

There was sober and respectful attention, and then applause, from all parts of the hall, when Governor Allen graphically and eloquently pictured the beginnings and the progress of brotherhood, how it began with Calvary and continued through the centuries to the deeds of Paul and Savonarola and Cromwell and the Pilgrims and Washington's soldiers and Lincoln.

"And we have transplanted brotherhood to this God-blessed country," he said. "Four generations of soldiers have given up their lives for it until we have planted it as a principle of leadership which makes us all to believe that God Almighty means America for leadership.

"It is going to depend upon the success which we make as just and honest Americans, of the problems of government and practical brotherhood in the civilization of the United States of America. That is what we are building to in Kansas. That is what the Kansas Court of Industrial Relations is. It means that the people of Kansas again are trying to hold up to the nation a remedy that will bring us back to righteousness of peace and justice.

"The message I desire to leave to-night is that the highest purpose of the Kansas Industrial Court is not to prosecute labor or to prosecute capital. It is a court of justice, and its aim is to protect labor against capital, capital against labor, and the public against both or either of them.

"I believe we found in Kansas a just solution. Mr. Gompers has offered you no relief to-night. His remedy for war is more war. My remedy for it is peace conditioned upon the impartial judgment of the righteous and responsible government."

In his closing remarks he gave the assurance that eventually the best friends of the law would be the union-labor men themselves.

It seemed to me that the attitude of the organized-labor contingent was that Governor Allen's argument appealed to their heads and Mr. Gompers's appealed to whatever of deep-seated prejudices they had. They attended the debate without any intention of being convinced of the wisdom of the new plan, but their mental defenses were overcome in unexpected places. Their loyalty to Mr. Gompers personally was unshaken, but their close attention showed they were there in a spirit of inquiry.

The personal loyalty shown Mr. Gompers was attested by hurricanes of applause and floral tributes. Such cries as, "Keep it up, Sam," greeted him as he made especially vigorous drives.

Near the close of the debate the newspaper men in the orchestra pit took a poll and gave Governor Allen the unanimous decision, saying that he had presented not the side of capital, but the side of the public, and blazed a new trail.

The debate was like a thunder shower on a muggy day. It seemed to aid appreciably in clearing the air. Probably this was the first time that a man standing high in national political circles had talked so frankly to organized labor regarding its deficiencies. And the labor men did not seem altogether to resent it. The obvious kindness that stood back of the Governor's daring statements gave the impression of sincerity and dependability.

The debate produced a reflex in the national conventions. Both the old parties showed by their platforms that they had reacted to the proposal of protecting the public against industrial warfare. The Prohibition party platform used the Industrial Court idea even to the point of phraseology.

It was a new note in American politics. The proposition had taken a novel and unexpected stand.

Samuel Gompers, the undisputed chief of American organized

labor during all its existence as a national entity, found that his weapons were slashing the air when he met Governor Allen in Carnegie Hall.

The veteran of many a platform joust came prepared to deliver the old-time attack against an old-time foe, and he found that the old-time foe was not there at all. His opponent was not representing capital, but the general public, and used the arguments of the public. When Governor Allen came to the crux of the argument, which was a question as to the rights of the public, the labor chief was thrown off his balance. He paced the floor uneasily, as if groping for a ground that he had neglected to prepare in advance.

The atmosphere was charged with potential electromotive force. The voltage was high at the opposite poles and an indiscreet touch might have short-circuited the whole affair in explosive fashion. The intensity was heightened by the curious fact that the antagonistic groups were comparative strangers, and also by the fact that the reasons for antagonism were not as clear as they would be if Mr. Gompers were meeting some representative of capital.

If Carnegie Hall had been crowded with representatives of capital on one side, and representatives of labor on the other, there would simply have been the same old sullen opposition; the same old familiar clashes over collective bargaining, closed shop, open shop, length of working days, and what not; the same old smoldering, but unexcited, spirit of dog eat dog. But the capitalists were absent. There were strange faces.

A special train had just come in from Kansas that day, and to the best of the writer's knowledge and belief there was not a single capitalist aboard. And with the exception of two or three there was not a man on the train whose name could be found in a roster of the fifty best-known politicians in Kansas. Middle-class business and professional men predominated. There was a goodly sprinkling of farmers and farm owners. And in viewpoint, at least, the Kansas contingent was a pretty fair sample of Governor Allen's sympathizers.

Inasmuch as the public's resentment against big and vital strikes is actually more pronounced than that of the capitalist, even if more repressed, the raw issue—if public welfare *versus*

the special organized interest—was here sharply dramatized for the first time.

Judge Alton B. Parker, who presided, sensed the currents below the surface when he introduced the speakers.

"Two great leaders of men are to speak through you to-night to more than one hundred millions of people," he said. "What they have to say will command at the outset wider consideration by both the press and the people than the famous Lincoln-Douglas debate. This is so, first, because all of the people of the United States are interested at this moment in the questions which they are to discuss, and second, for the reason that in addition to the great skill of the debaters they have had for a long time since a record of work that demonstrates their faith in the positions which they take to-night."

The audience sat respectfully and expectantly through Mr. Gompers's opening speech. It applauded the recital of labor's honorable triumphs. It liked to hear of the abolition of child labor and the winning of humanitarian conditions.

"The free man's ownership of himself and his labor implies that he may sell it to another or withhold it," said the veteran labor chief. Certainly—the crowd agreed with that. The audience believed that a man may work even if others do not want him to work, or he may quit even if others do not want him to quit.

"Capital is that which one has—labor is that which one is," he said, and the people cheered the aphorism. He recited the history of labor and its winning fight for reforms and betterments. He bitterly arraigned what he said was a proposal to make it a crime to quit work. It was against the Thirteenth Amendment, he said. He pleaded eloquently for individual liberty.

"We are at the parting of the ways in the great controversies which are now occupying the mind of the people," he said. "On the one hand we have the great constructive movement for progress, for civilization, and with all the tasks these impose, and on the other hand we have those who are leading the course of reaction, of injustice, of tyranny.

"The free man's ownership of himself and his labor implies that he may sell it to another or withhold it; that he may, with

others similarly situated, sell their labor power or withhold it; that no man has even an implied property right in the labor of another; that free men may sell their labor under the stress of their needs, or they may withhold it to obtain more advantageous returns. Any legislation or court construction dealing with the subject of organizations, corporations, or trusts which curtail or corner the products of labor can have no true application to the association of free men in the disposition or withholding of their labor power.

"The attempt to deny free men, by any process, the right of association, the right to withhold their labor power or to induce others to withhold their labor power, whether these men be engaged in an industrial dispute with their employers, or whether they be other workmen who have taken the places of those engaged in the original dispute, is an invasion of man's ownership of himself and of his labor power, and is a claim of some form of property right in the workmen who have taken the places of strikers, or men locked out.

"If the ownership of free men is vested in them, and in them alone, they have not only the right to withhold their labor power, but to induce others to make common cause with them, and to withhold theirs that the greatest advantage may accrue to all. It further follows that if free men avail themselves of the lawful right of withholding their labor power, they have the right to do all lawful things in pursuit of that lawful purpose. And neither courts, injunctions, nor any other processes have any proper application to deny to free men these lawful, constitutional, natural, and inherent rights.

"The Clayton Act, declaring that the labor of a human being is not a commodity or article of commerce, put these principles on the United States statute books.

"There is a common error in the minds of a large number of our people, and the peoples of the whole world, who confuse the terms 'labor' and 'capital' as being in exactly equal positions toward each other. The fact of the matter is that capital is the product of labor. The immortal Lincoln said: 'Capital is the fruit of labor and could not exist if labor had not first existed. Labor, therefore, deserves much the higher consideration!'"

Mr. Gompers was reading the primer of organized labor. He

was using the traditional arguments against the oppression of employing capital. Either he misunderstood the general public or he was employing the tactics used by the political speaker who, when cornered in an argument, launches into a fervid peroration on the Stars and Stripes.

Whenever he made an eloquent point on the old issues he was greeted with enthusiastic applause. He warmed up to his task apparently with the feeling that he was accomplishing what he desired.

The adherents of Governor Allen were sitting back in their chairs, knowing that the real clash was yet to come.

"Then we hear much about capital and labor and the 'public,' as if the workers were not a part of the public," said Mr. Gompers, derisively. "I agree that strikes and cessations of work are uncomfortable and make for inconvenience, but, my friends, there are some things worse than strikes, there are some things worse than cessations of labor, and among them is a degraded manhood." With such phrases he sought to smother the issue which he subconsciously seemed to feel was coming at him, though he was not sufficiently familiar with the Kansas law to realize in what form it was likely to come.

"A people intelligent, independent, and virile, with life, activity, and aspirations, are always the vanguard for progress and civilization." He went on: "We know the pangs that motherhood undergoes, but because of that pain and travail is there anyone who would advocate that this wonderful present and future of motherhood and fatherhood shall cease?

"In every country on the face of the globe, and in all eras, there have been the incidents and the vents of struggle: struggle for expression, struggle for a better life, a happier day. All the efforts of old to suppress by law, by edict, the right of the toilers to express themselves, and the struggle for their uplift, have been in vain. The law attempted to be enacted, whether in the United States Congress, or by any state within the Union, will find the exact fate of the laws and edicts and decrees of sovereigns and parliaments and judges in the past.

"Mark you this fact. The charter of the American Republic, the cause for which the Colonists declared the independence of the Thirteen Colonies, was the inalienable right to life, the in-

alienable right to liberty, and yet after a hundred and forty years and more there rise up men who, in their impatience with humankind, want seriously and by law to make it a criminal offense to exercise liberty on the part of the working people.

"Liberty! What is liberty? The right to own oneself, that he may do with his powers what best conserves his interests and his welfare. The Thirteenth Amendment to the Constitution of the United States gave sacred guaranties for the liberty, for the future liberty, of the chattel slave—that is, that he nor any other person in the United States or in any part under its jurisdiction, should be forced into a form of slavery or involuntary servitude except as a punishment for crime of which the party should be duly convicted.

"The difference between a slave and a free man is that the slave must work when his master or owner directs and wills. The free man may stop his work whatever consequences or suffering may be involved. The right of a man to dispose of himself, of his labor, and his labor power has been set forth in a Supreme Court decision, an opinion read by the then Associate Justice of the Supreme Court, Mr. Hughes, in which the principle is clearly set forth that an involuntary servitude is any control by which the personal services of a human being are disposed of or coerced for any other benefit. It does not mean that a man must be himself in servitude so that the master can say to him, 'You shall not leave here, or you must leave here,' but it is any control by which his personal services are disposed of without his will, the coercion meaning not by the lash of the whip, but coercion by the operation of the state.

"In the United States the spirit of unrest finds its expression in the workers organizing upon the American idea, upon the American principle of organization by nation, by state, by locality, and all based upon the sovereignty of the individual.

"In the United States we organize our unions and federate them in state and national bodies. In the United States we undertake, by negotiations with our employers, to bring some light into the life and the work of the toilers. And when we cannot agree, when the employers and the workers fail to agree, what does it mean? A cessation of work? A strike? It means that the old conditions and terms for the purchase and sale of

labor power have proven unsatisfactory either to one or the other side, and each undertakes to do that which he has the lawful right to do—endeavor to persuade the other to his terms. And when the strike or lockout is over the new conditions and terms for the agreement upon which industry shall be resumed between them and carried on for a period of a year to five years, until there is a new want among employers or a new desire and hope among the employees."

Adroitly the labor leader strove to shift the burden of proof to his opponent by stressing the sufferings of labor and its effort to keep itself free from oppressive restraints. He warmed himself with his theme.

"The right to own oneself, the right to be free from a court's direction or a judge's direction, when that normal and natural right to stop work is exercised, not to commit crime, not to commit overt acts, but to stop work—the right of a man to own himself, to work or not to work—is his right, and not the right of government, nor states, nor courts. It is man's; it is the human right, from which there can be no departure without taking away the freedom, the liberty, and the natural expression of the human. That is the thing for which we are contending and will contend, no matter what may come."

When he finished he was greeted with an ovation, and was presented with a huge bouquet of flowers. With a surprisingly strong voice and vigorous presentation the labor chief had sounded the familiar tocsins and alarms of the unions. The labor leaders greeted him almost with reverence.

It was an interesting psychological study. Mr. Gompers was not talking to the American public. He was scarcely talking to the people in the hall, except as he knew them to be intermediaries and carriers of his message.

He was talking to his own followers, and he was saying the things he knew they would like to have him say. He was the old champion, interposing his gallant "stub of a sword," as he himself put it, between the old way and the new, and he sought to preserve the old way—the only hope of the primitive rough-and-tumble unionism—the right to strike.

As he stalked sturdily to his seat he looked impassively truculent and quite sure of his appeal. His personality, his gray hair,

and his picturesquely rugged face made a deep impression. If his opponent had been a spokesman for capital he would have had to start an uphill climb.

But the man who arose to take up the argument was a man who was an actual handworker, without resources, struggling through college, at a time long after Mr. Gompers had forsaken the shop for the office. Governor Allen was not speaking for the party of the first part or the party of the second part, but for the party of the third part. It was the public he represented, and the arguments he used were not the stock arguments of capital, but the new plea for the unorganized majority and for the laborer in the ranks.

Graphically and rapidly he sketched the events of the Kansas coal strike. He told of the impending suffering from cold in midwinter. He told of the stubborn union boss, Howat, who bowed his neck against all humanitarian efforts to bridge over the fuel famine. He told of the state receivership and the call for volunteers. He told of the young soldiers who led the movement. He told of the boycotting of the Pittsburg hospital by the unions, and the threat of death by freezing, to the inmates. He told of the poor washerwoman who was threatened with disaster because she washed clothes for the volunteers. And then he told of Guffey, the union miner who determined to work in spite of the union boss's orders, to save his family from starvation, and how the union therefore suspended him for ninety-nine years and made grievous threats against him. "There's your personal liberty," he said, in a sudden climax, hurling the favorite union phrase back at Mr. Gompers.

One could almost imagine the union leaders' surprised "Ugh!" as this blow struck home. There was an instant of shocked silence, and then a chorus of "boos" and hisses.

Now the fight was on. The American Federation representatives in the hall began to see just where the conflict lay. They were leaders; the argument was directed toward them, not at the unions. It hurt. They immediately saw they were on the defensive. They were hearing a new kind of a labor speech.

Mr. Gompers used the didactic, academic style of argument. Governor Allen used the narrative, human-interest style punctuated occasionally by thrusts of sarcasm and living logic.

The debate drew away from the regions of academic argument and became a contrast of two currents of human interest.

As soon as it was seen that Mr. Gompers would have to abandon his somewhat detached attitude and recognize his adversary in a personal way, the hearers became more turbulent and keenly interested. Applause arose in spontaneous waves at each telling point.

Governor Allen developed his theme to a climax, bringing in the arguments as they appear in this book.

"We have not taken from labor the right to quit work," he said, in another flash of sarcasm. "We have only taken away from the labor leader his divine right to order men to quit work."

There was another chorus of "boos" and hisses from those who were hit. There were wild cheers from his supporters.

The speaker smiled amiably and waited.

"Now, we will just take that as an expression from both sides. I know just how you feel. If you will permit me, I will go on."

With two or three minutes to spare, at the end of his first speech, he went over to a table, hunted around a bit, and came back to the front of the stage with a sheet of paper.

"I would like most respectfully to ask President Gompers if he will answer a question," he said.

The audience pricked up its ears. He read, slowly and distinctly:

"When a dispute between capital and labor brings on a strike affecting the production or distribution of the necessities of life, thus threatening the public peace and impairing the public health, has the public any rights in such a controversy, or is it a private war between capital and labor?" If you answer this question in the affirmative, Mr. Gompers, how would you protect the rights of the public?

"And, in addition, I wish him to define, if he will, who had the divine right to forbid the switchmen to strike in their outlaw strike? Who controls this divine right to quit work?"

He sat down, and the audience went into a long and exuberant wave of applause. Things were getting highly interesting. What would Gompers say? How would he answer those questions? Everybody craned his neck as the stocky little man in the long frock coat arose stiffly for his second speech.

He paced back and forth. Visibly irritated and uneasy, he seemed to feel that the solid ground had slipped from under him.

"It is one of the most difficult tasks for one to attempt to keep up with a statement of facts or alleged facts and expect another to answer," he began. "The Governor has taken up the last minute of his time to read a question. If I had time I would answer the Governor."

"Answer it, answer it," urged several voices, encouragingly, from the audience. There was a confusion of cries, intermingled with laughter and cheers. The speaker became nettled.

"I will prove it to you," he shouted, warming up, "if I live long enough to prove to you, that I can! Let me say this, however, that an innocent child can ask more questions of his father—"

"Answer it, answer it," persisted the voices from the gallery.

It was a new situation. The veteran labor leader seemed to feel hurt.

"The Governor's adherents here are made up of ladies and gentlemen," he said, with implied reproof. "I shall try to answer the Governor's statements as best I can, and I assure you of an answer if I have the time, even this evening."

Governor Allen's supporters in the audience exchanged knowing looks, and Mr. Gompers proceeded to discuss some other phase of the labor question.

Mr. Gompers did not answer the question that night. He issued a statement ten days later, which purported to be an answer. But in actuality he has not replied to the question up to the time this was written, late in November, 1920. His statement was a halting evasion. He will not reply unless he is prepared to relinquish his leadership.

Why?

Because a clear-cut affirmative answer, together with some plan for protecting the public, will offend the radicals, who do not concede that there are any rights except those of the so-called proletariat, no matter what the proletariat desires. A negative answer would, of course, serve to alienate every believer in the American form of government, and render outlaw Mr. Gompers's whole sphere of influence.

Governor Allen answered the question simply by citing the American Constitution, which makes the rights of the public paramount to every special interest.

Why did Mr. Gompers stumble at this question?

When he stumbled and hesitated organized labor everywhere was by him unjustly put on the defensive. His failure to answer put organized labor in the wrong light. It began a new chapter in American union history. His failure was an unjust aspersion upon his whole organization, for it meant an unwillingness to acknowledge the sovereignty of the unorganized majority. It meant an assumption of special privilege by an organized minority—an assumption heretofore attributed to capital by labor.

Regardless of titles, regardless of disagreement as to the subject of the debate, the discussion was put on a certain definite plane at this crucial moment. The issue was definitely joined.

Mr. Gompers contended that the right to quit work was identical in principle whether it applied to one man acting as a free agent and without regard to time or circumstance, or a thousand men acting in concert, under organization orders, even if their action controlled the production of necessities. He drew no distinction.

Governor Allen contended that the action of a thousand men was different—that it was precisely the opposite of an expression of personal liberty because it implied control by a central body or leader—that it often interfered with the paramount rights of the public and the individual liberty of the worker.

Mr. Gompers claimed that the public could well afford to take chances with the unions for the securing of necessities, and that if they wanted to avoid strikes or get better results they had better work on the employers and capitalists—in other words, he maintained in effect that the unions could do no wrong, all the wrong coming from capital's side.

Governor Allen took the stand that union leaders, who seem to have a lot to say about bringing on strikes, are just as apt to be wrong as anybody else.

Mr. Gompers proceeded upon the theory that the union's contentions presuppose a set of overshadowing humanitarian rights superior to any right the public may have.

Governor Allen proceeded upon the theory that the safety of the people is the supreme law.

Mr. Gompers was unable to see any alternative for the strike. The strike was the only conceivable righter of industrial wrongs that seemed to him effective or worth while.

Governor Allen argued that a just and impartial government was better able to insure fair treatment than any special form of physical or economic pressure applied by a minority.

Mr. Gompers's claim for the merits of the strike was what it had done for organized labor.

Governor Allen's claim was that the strike had wrought more injury to the public than it had done good for labor, and that a large share of the credit for labor's better condition was due to the generally enlightened public opinion of the country, expressed through legislation even where labor unions were not strong enough to accomplish things by their own might. He also questioned the good that the strike had done for labor itself.

Mr. Gompers finally made a great and crowning mistake. Owing to the attention given to other matters this false step seemed to escape general notice. He adduced the instance of the German workers when Von Kapp threatened the re-establishment of a monarchy. He defended the use of a strike to accomplish a political end. He denounced the Kansas law on the ground that it would prevent American workers from striking to head off a change in our form of government.

Those who had given some study to the subject of direct action gasped. Had Gompers become a direct actionist? Did he defend the use of the strike as a political weapon? Certainly he did.

It appeared that "the toiler's right to live" was not the only thing Mr. Gompers wanted to safeguard by the strike weapon, after all. He proposed, inferentially, at least, that the strike be used to accomplish governmental ends. Perhaps he was thinking of the Adamson law. He forgot that in America the right of majority rule by ballot is forever safeguarded, and that no conceivable contingency can justify the employment of any political weapon except the ballot. He forgot that no principle of Americanism can permit the use of economic pressure as a means of directing the course of government either toward or

away from monarchy. He forgot that direct action to forestall a governmental change is equivalent to direct action to bring about a governmental change. His statement was, in effect, a sanction of the strike against the government.

And there was another matter in the background of the debate, behind the scenes, wherein the strike did not involve "the toiler's right to live." Mr. Gompers had to "front" for this, although it was in the background.

That was the matter of the nonunion fish.

What is a nonunion fish?

A nonunion fish is one that is left to rot while the union fish goes on its way to be eaten by the supposedly sovereign American citizen.

Now, the nonunion fish was not seen at Carnegie Hall. But his ghost was at the banquet. The impolite smell of him lurked over Manhattan Island.

The strike of the New York freight handlers, then in progress, formed a background of grim and sardonic actuality that did not belong in Mr. Gompers's front parlor or his showcase. It did not harmonize with his poetic portrayal of unionism. But it illustrated so perfectly what Governor Allen was arguing that it must be brought into the picture. The Kansas executive had the material in his pile of reference matter, but lack of time prevented its use.

The principal contention in this strike, involving union truckmen, lightermen, freight handlers, and other transportation laborers, was that they would not handle products which at any time had been handled by nonunion labor.

Fish coming from far-off coast villages were scrutinized as to origin. Fish caught by union men were sent on to the consumer. Fish caught by nonunion men were shunted aside and delayed until they rotted. The consumer ultimately paid the bill, and one of the sources of his food supply was endangered. The unions were trying to dictate the terms of life to the unorganized public.

Manhattan Island, with its four or five million people, is hemmed in by—transportation. So is every other community not capable of self-support, but the case of Manhattan stands out particularly because of the tremendous congestion of life

and the complexity of the transportation arteries of bridges, tubes, ferries, and freighters, which arteries are under the finger of perhaps one hundred thousand organized unionists and capitalists. With the unions extending their functions to the control of far-flung activities and threatening stoppage of transportation if certain demands are not met, Manhattan is at the mercy of a minority organization of special interests—"special privilege"—with no law to prevent the starvation of the four or five million.

It is no wonder the crucial question about the rights of the public was not answered by Mr. Gompers.

When his hecklers in the audience for the third time pressed him to reply, saying, "Why don't you answer it?" he lost his temper, and blazed forth, "Why don't you shut up?"

He did not answer the other question, either. Withdrawing from the uncomfortable atmosphere of such controversial matters, at the last he betook himself to the shelter of his first attitude—that of the heroic champion of labor. There was something akin to pathos about it.

He was again appealing to his followers for their personal admiration. He finished the debate suggestively, as I shall finish this story of it, by the use of a poem. He used it for reasons that are sufficient to himself. It may help to explain his attitude toward the debate and throw some light on the psychology of Carnegie Hall that evening. Here is the poem:

More than half beaten, but fearless,  
Facing the storm and the night, reckless and reeling,  
    But tearless,  
Here in the full of the fight  
I who bow not but before thee,  
    God of the fighting clan,  
Lifting my fists I implore thee  
    Give me the heart of a man.

What though I live with the winners,  
Or perish with those who fall,  
Only the cowards are sinners,  
    Fighting the fight is all.

Strong is my foe, he advances,  
Snapped is my blade, O Lord.  
See the proud banners and lances.  
Oh, spare me this stub of a sword.

Give me no pity nor spare me,  
Calm not the wrath of my foe.  
See where he beckons to dare me;  
Bleeding, half beaten, I go.

Not for the glory of winning,  
Not for the fear of the night,  
Shunning the battle is sinning.  
Oh, spare me the heart to fight.

Red is the mist about me,  
Deep is the wound in my side.  
Coward, thou criest to flout me.  
Oh, terrible foe, thou hast lied.

Here with the battle before me,  
God of the fighting clan,  
Grant that the woman who bore me  
Suffered to suckle a man.

## VII

### MR. GOMPERS'S SUPPLEMENTARY STATEMENT

ABOUT ten days after the Carnegie Hall debate Samuel Gompers issued to the press a supplementary statement, in which he discussed the crucial question as to the rights of the public, which he failed to answer in the debate itself.

This statement cannot be called an answer to the question, for he touched upon the issue only in an evasive manner. The nearest he came to an answer was this:

Labor has no desire to cause inconvenience to the public, of which it is a part. The public has no rights which are superior to the toiler's right to live and his right to defend himself against oppression.

He assumes by this statement that all strikes involve the toiler's right to live and defend himself against oppression. This assumption, of course, is erroneous. There are many strikes in which those rights are not involved; for instance, those where workers refuse to handle nonunion products or to work with nonunion men. Many strikes are called where something decidedly more than a square deal is demanded. In the Kansas coal strike the toiler's

right to live and defend himself against oppression was not involved. It was safeguarded by the state in the offer made the miners under the state receiver-ship. On the other hand, the question was whether the public had a right to live and defend itself against oppression. The miners had plenty of coal—the rest of the public had none.

Even if Mr. Gompers was right in that assumption there would still be a very serious flaw in his argument, for he assumes also that this term "toilers" means the particular union craft that is striking in any particular case.

There were 12,000 coal miners in Kansas. The total toiling male population of Kansas is something like 400,000. Does Mr. Gompers mean to say that the rights of the 12,000, or less than 3 per cent, are greater than the 388,000, or more than 97 per cent? If his statement means anything it means just that. The trouble is that when he talks of "toilers" he means only that section of the toilers who happen to belong to organized labor and thereby happen to have placed themselves under Mr. Gompers's leadership. And when any particular strike is under discussion he can mean only that section of organized labor that is striking, for the other sections of organized labor suffer together with the unorganized public, no matter what their union sympathies may be. In any case, he is claiming for a small minority the right to dictate the terms of life to the majority.

This also answers his contention that "there is no

public wholly separate and apart from employers and employees."

"Employment to the employer means one thing; employment to the worker means another," he said. "To the employer it is an impersonal thing, like buying steel, while to the worker it is the means of sustaining life." This matter is discussed under the topic of collective bargaining.

"The strike is the only effective weapon by which the workers may compel consideration of their just demands," he continued. "The freedom of workmen in enjoyment of the right to strike means the freedom of men to make life better, safer, happier—the right of men to elevate the whole tone of society and to force abolition of abuse, injustice, and oppression."

Against this assertion it is pertinent to remind the student of labor policy that strikes are the least frequent in times of depression, when workers need relief the most, and strikes are most abundant in times of greatest prosperity and an upward trend of wages. This materially refutes this argument for the strike. The function of the industrial court in regard to times of depression and prosperity is dealt with in another chapter.

He speaks of the strike being "a measure necessary to public progress," and says that it has "won its right to a post of honor among the institutions of free civilization." This hardly requires comment in the light of the tremendous waste, suffering, and

friction it has caused. One might as well say that the caveman's club is an instrument of progress. Both are relics of raw force; both are reactionary.

He attempts to draw a parallel between the progress of efficiency among workmen and the growth of strikes and raw union power. As a matter of fact, efficiency and output of product have never been so low as under the period of most abundant strikes. The year 1920 seems destined to go down in history as a year in which organized labor reached an alarmingly low point in morale. In the report of the grand jury which investigated the housing shortage in Cleveland early in 1920, these remarks are made:

The testimony adduced shows conclusively that it requires approximately twice as long for the same number of men to erect a house to-day as it did in prewar time.

Carpenters, bricklayers, paperhanglers, painters, and plasterers all do less than half the work in the same time they did five years ago.

Manufacturing firms which make and sell building materials prove by their records that while wages have gone up 200 per cent, labor costs have gone up 400 per cent, indication that their employees are getting double pay for one half the work as compared with before the war.

A railroad mechanic in Milwaukee went through the shop one day in July, 1920, and saw a locomotive standing there with a chalk mark, "To be finished September 1st." As a mechanic, he gave his word that the work could have been finished in a day. This is only an instance which many readers could doubtless duplicate hundreds of times.

"Industrial peace is desirable. Industrial greed is what prevents it," Mr. Gompers goes on to say. This statement cheerfully assumes that organized labor is altogether faultless and that the employer in every case is to blame. No comment is necessary.

"The struggle is in industry, not in politics," he says. The same kind of statement no doubt was made when a law against dueling was proposed—"This is a matter of honor between gentlemen—not a matter of politics."

One of the statements he makes is taken by some to have a great significance. He says that "when employers agree to abandon their old concept, when industry ceases to be operated for profit alone, then there will be time to relax that eternal militant vigilance which has saved the workers from the abyss. . . . The workers will not sacrifice human progress for an abstraction which is called the public welfare."

By what economic magic does Mr. Gompers propose to determine where and when industry is operated for "profit alone"? Here, on one side, we have service; on the other side we have profit. Presumably, when employers operate only for service, there will be no strikes, according to Mr. Gompers. Well and good. And then suppose workers begin to operate only for service. One proposal is as fair as the other. Workers have been known to work for profit alone, not caring particularly about the service they were rendering society. One day a

worker feels good. He takes real pleasure and pride in his work. He thinks of how his product will feed or clothe or warm society. Another day he feels out of sorts. He wants to get through the day's work and draw his pay. He doesn't care about his service to society.

Where does Mr. Gompers propose to draw the line?

It is customary, possibly, to think of the employer being devoted wholly to profits. We do not propose to argue the question. But is not there an outside chance that he may be actuated by a great deal the same kind of motives as the worker?

What Mr. Gompers has in mind in this connection is a personal regeneration of men's hearts, not a matter of labor or political policy. On such a plane we shall gladly co-operate with him in any effort he may have in mind. But in the meantime we have to deal with the frailties and errors of real human beings, who average up about the same whether they be employers or employees.

"An abstraction called the public welfare"—with such an airy gesture Mr. Gompers dismisses that for which many Americans have died. Public welfare means good government. It means democracy. It means life, liberty, and the pursuit of happiness. If it is a mere abstraction, then our struggles toward a better day have been in vain and our history has been a mockery.

But public welfare is more than an abstraction.

It is a very real and substantial thing toward which we as a nation must bend our attention with increased earnestness. To abandon it or to sneer at it means a surrender to autocracy. The question concerning the rights of the public is still unanswered by the spokesman of organized labor.

## VIII

### LABOR LEADERS AND THE WAR

**I** FOUND in the Carnegie Hall debate that the most difficult phase of the labor problem which I attempted to present to the audience was that of the attitude of the labor leaders during the war.

That part of the audience sympathetic to my side of the question was surprised that I should attempt to discuss a phase which would necessarily arouse the bitter hostility of all the adherents of Mr. Gompers. I did not attempt this until I discovered that Mr. Gompers, in his argument, was laying particular stress upon the patriotic attitude of labor during the war. He had gone to even greater lengths in previous speeches, and the tendency of his remarks was to lead to the conclusion that organized labor was more patriotic during the war than any other class in our population.

It is not my purpose to detract from the patriotism of the splendid men from the ranks of organized labor who trained side by side with the men from the schools, the colleges, the farms, and the commercial walks of life, and who fought in France. The record of service of all these men is such that it

elevates them to a degree where they do not belong to this controversy. They all merge into the common sacrifice which America made. The labor ranks are represented in the 60,000 who lie buried in France, in the 250,000 who have come home bearing the wounds of war, and in the 3,000,000 who have returned to their ordinary vocations. These men do not even ask us to compare their conduct with that of the men who stayed at home for twelve dollars per day in cost-plus war industries. With the modesty of the really brave they do not ask us to remember how really patriotic they were.

Concerning the contribution of man power which labor made to the conflict, it was a worthy part of the whole. Naturally, it enjoyed from the selective draft larger exemptions than any other class, because of the peculiar need of productivity in order that we might carry on the functions of war, but there is no distinction in the character of the service performed by those who went from labor and those who went to the war from other classes of society.

When we come to discuss, however, the attitude of the labor leaders during the war, we do not find in it any justification for declaring it any more patriotic than the attitude of the leaders of capital who engaged in the construction of cost-plus war industries. I think nothing is more typical as an illustration of this sort of labor leader than the example I am about to give.

In October, 1917, President O'Connell of the

Metal Trades department of the American Federation of Labor, in an address at Washington, said:

It is the aim and object and effort of the leaders of organized labor in our country to maintain organized labor, to maintain our rights, to strengthen our positions, and to be a part of the war. But we must be consulted. We must be taken into confidence. We must be taken into conference. We must be sat down with, not by the employer, but by they who are in control of the governmental affairs of our country.

I have chosen President O'Connell's expression because it is typical of the spirit of all the leaders. I believe that the great mass of workers, both union and nonunion, were loyal to the country, but habits of thought and action cannot be formed over long periods of time without expressing themselves in a national crisis. The leaders of organized labor, to preserve their own oligarchic control, and in the obsession of their fanatical belief in the necessity of union domination, were never willing to forward the prosecution of the war except with a corresponding advancement of the organized-labor movement. It was never subordinated to the necessities of the country and every pledge of co-operation and support made by the official spokesman of the American Federation of Labor was supported by reservations of speech and conduct which plainly indicated that the unionization of industry and the exclusive representation of workers through unions and union leaders was the price, never waived or conditioned, of co-operation. No other organization went so far

as to say that the government must obey the wishes of that organization in order to obtain its support.

In another place, O'Connell said:

Nothing can take place, nothing can be done, unless we are consulted and practically give our consent to it. . . . No movement can be, no movement can progress, no movement can become a power in this country, no movement can be successful unless the trades-union movement says so.

You get the full shock of this when you realize that O'Connell was talking to workers interested in great projects like shipbuilding. He was at the head of the department of the American Federation of Labor which had most to do with that essential work of the war.

Speaking direct to his co-laborers, he said:

You have the shipbuilding, and we are not talking about getting a penny an hour increase any more. Now we are striking for dollars. We have forgotten that there is such a thing in the market as a penny, any more. It is dollars we are talking about. Out on the Pacific coast—you know what is going on out there now—Seattle, Portland, San Francisco—all asking for a dollar, two dollars a day increase, three dollars a day increase. It doesn't frighten anybody any more. Nobody gets boisterous about it any more. We are just getting together, and going to talk to get dollars now instead of pennies. . . . Get it into your head to talk dollars. See what you got when you talked dollars the last time. Keep these things in mind. Talk about dollars, and after a while when you have been doing that awhile you will have no hesitancy in doing it. You will lose your bashfulness. The opportunity is presented for the first time in the history of the United States. Practically a union contract signed between the government and the officers of the department and affiliated organizations, practically requiring the shipbuilders of America to come to Washington and put their feet under the table of

labor leaders. Here is another great advantage that labor has secured in connection with this offer. Instead of the great expense you have been obliged to go to in these matters, the Shipping Board is paying our expenses, so we are all getting expenses to come to Washington now, and the government is paying them. [Applause.]

Isn't that a pretty good union agreement? That is only the beginning. We are now working on another plan to handle all the munition plants, all the munition factories where munitions of any kind are made for the government, either direct by contract or subcontract. It sounds good to me. If any of you have nine dollars in your pocket you would think about it and wish it were ten. If you had ten you would wish it were a hundred. If a hundred you would wish it were a thousand. If you had a thousand you would wish it were ten thousand. If you had ten thousand you would wish it were one hundred thousand. Now, I hope you men here will get in their minds that beautiful thought of "more." Place your officers in a position to go out and demand, and back them up.

This was in 1917, when all over the country men and women were being urged to subscribe to Liberty Loans and other war measures as a matter of patriotism, when we were being urged to conserve that the sinews of war might be strengthened.

We are all familiar with the manner in which labor leaders got the beautiful thought of *more*.

The history of labor and capital in the cost-plus war industries which piled the waste of the war into bewildering billions will form the most disagreeable chapter in the story of America's contribution to the war. The effort at production was subordinated to the effort to pile high the cost of the work.

Mr. Piez, the late Director General of the Emergency Fleet Corporation, declared:

Labor has been deliberately slack during the war. In the shipyards workmen received two dollars for the same time that a year ago brought only one dollar, while the individual output was only two thirds of what it had been a year before.

The *Marine News* in a statement said:

The pay in American shipyards in 1918 was twice as high as it was at the beginning of the war, and the output per man was only 50 per cent. That double pay, with only half as much produced, resulted in a cost per unit of production four times as great.

At the hour when the demand for speeding up production in order that our soldiers three thousand miles away might have the support they needed, there were strikes in practically every activity which was producing munitions and material of war. Between April 6, 1917, the date of the beginning of the war, and November 11, 1918, the day the war closed, there were in America more than six thousand strikes.

These figures are from the Bureau of Statistics of the Department of Labor and are not wholly complete. If you wish to get a relative comparison which gives you the full and shocking meaning of this, compare the number of strikes in America with those in Germany during a like period. It is the estimate of the Labor Department, based on the American figures and the official statistics of the German Empire, that four times as many workdays were lost through strikes in the month of September, 1917, in the United States, as were lost in the entire year of 1916 from the same cause in Germany.

It is my belief that if the twelve to twenty and thirty-dollar a day men who worked in war industries during the crucial period, and the leaders who organized them for these industries, had been as patriotic as Mr. Gompers claims, there would not have been six thousand strikes in the United States, of an average duration of eighteen days each, while we had two million soldiers in foreign lands working sometimes twenty-four hours a day for thirty-three dollars a month, facing death in trenches and open fields, fighting with insufficient equipment and insufficient clothing, and whose only thought of *more* was that they might have more material of war, more munitions, and more equipment with which to carry on the magnificent effort to which they had pledged their lives.

While this was going on, Mr. Gompers declared in America that it was damnable that 240,000 government employees, drawing salaries up to \$2,500 a year, should be made to work eight hours a day.

Mr. Gompers gave us frequent assurances of his loyalty, but he cannot escape the part he took in defeating the work - or - fight law and the Thomas amendment, which would have prevented the drafting of 670,000 eighteen-year-old boys into the service, notwithstanding the fact that there were 21,000,000 available grown men of military age from which to select at that hour only 2,300,000 needed soldiers. By putting into effect the work-or-fight order we would have secured twice the number needed. Instead of that, Congress obeyed the wishes of Mr.

Gompers on the subject and we began to draft eighteen-year-old boys for the service, while some of the laboring men, both organized and unorganized, refused to work in war activities unless they were paid twelve to fifteen dollars a day.

During September, 1917, in the midst of a most disastrous drought in Oklahoma and Texas, the shopmen of the Orient Railway demanded an advance in wages, a compliance with which would have placed the Orient's schedule of wages in excess of that paid by such wealthy neighbors as the Santa Fe. This, together with the Orient's financial inability to pioneer in the advancing of wages, resulted in declining the demand. This was followed by a strike of all the mechanics, which practically ruined the functioning of this road in an important section at a critical period. The ranges in Oklahoma and Texas were full of stock perishing for want of proper pasture. The management of the railroad had just secured a goodly number of stock cars for the purpose of moving the cattle to pastures where feed and water were obtainable, and the general manager made a personal appeal to the loyalty and patriotism of the men, asking that they continue work at least sufficiently long to remove the cattle to a place of refuge, calling attention to the supreme importance of conserving foodstuff at that time. His request was treated with silent contempt, and thousands of cattle perished because there was no way of moving them either to market or to other pasture lands.

The Brotherhood of Railroad Trainmen, under the leadership of Murdock of Chicago, went on a strike, not against the railroads, but against the switchmen's union, to force the roads to employ only members of that organization, which is the only railroad organization affiliated with the American Federation of Labor. This was at the very time when our troops were being rushed across the country, most of them through Chicago, by the thousands.

Another strike occurred in the oil fields of Louisiana and Texas just as our boys were going across the ocean at the rate of two hundred and fifty thousand a month. Most of the transports were using oil as fuel. This strike slowed down the movement. It was for the purpose of bringing economic pressure of the grimdest sort at an hour of national peril that this strike was ordered.

These are merely types of the six thousand strikes that occurred during the crucial days in our production.

There is no record that Mr. Gompers protested against any of these strikes. He seemed to regard these opportunities as legitimate occasions for forcing advantages which could not be obtained in times of less pressure.

On the day the armistice was signed, Mr. Gompers, accompanied by Secretary of Labor Wilson, was in Laredo, Texas, attending an international labor conference for the purpose of organizing Mexican labor and affiliating it with the American Federation of

Labor. According to press reports of that meeting Mr. Gompers is quoted as saying, "Labor will not surrender any of the advantages it gained during the war." This in itself is an admission that his conception of labor policy during the war included very materially the consideration of gaining something.

I am aware that the foregoing utterances will arouse the anger of some of the radical labor leaders, but it is high time that the situation be faced candidly. The impulse of the rank and file of labor—organized or unorganized—was loyal during the war. I will not be misquoted on that point. The principal fault lies with the radical leaders, and the responsibility can often be placed quite definitely. One of these days the rank and file will discover that there has been false leadership, and there will be a weeding out. If there is ever a reaction against organized labor because of these things—which I hope there will not be, the fault will lie squarely on the heads of those leaders, for they have been shortsighted and drunk with power.

## IX

### WHY THE INDUSTRIAL COURT?

**A** MAN may run around in a twenty-foot circle in an empty hall, whooping and creating a general disturbance, without causing the community any inconvenience.

If there were a few other men in the room, engaged in various diversions, such excrecent manifestations of liberty might still be harmless.

Let the same hall be crowded with people trying to listen to a speech or a violin solo. A man pursuing such tactics would be promptly called to account for stepping on the toes of the audience and for preventing them from enjoying their plain rights. He would probably be arrested for trespassing upon the liberties of others.

If there were two men employing his tactics, playing some kind of a bear-cat, tooth-and-claw game, the people would either have to get out of the hall and admit they were bested, or adopt some kind of restrictions that would curb the activities of the boisterous contenders.

One theory of handling industrial relations is built around the philosophy that the important thing is to

bring about a feeling of co-operation between the two contenders in the hall without restricting the liberties of the two or protecting the interests of the other occupants. The rights of the audience—the party of the third part—seem to be very much in the background, or virtually nonrecognized.

This theory is all right as far as it goes, but its sin of omission is equivalent to a fault of commission. It is voiced in the report of the President's Industrial Conference, to which more extended notice will be devoted later. It says, in discussing the development of industrial relations from the dawn of civilization:

While the relations between employers and employees are primarily a human problem, the relationship in its legal aspects is one of contracts. In the development and establishment of this right of contract on the part of workmen is written the history of labor.

It says of any decision of the tribunal it proposes to erect:

It shall have the full force and effect of a trade agreement which the parties to the dispute are bound to carry out.

It says of the freedom of labor:

It may aid in comprehending the work of the conference to recall that the present condition of freedom has come about not so much from positive laws as from the removal of restrictions which the laws impose upon the rights and freedom of men. The conference confesses that in the prosecution of its work it has been animated by a profound conviction that this freedom that has been wrought out after many centuries of struggle should be preserved.

The system of machinery proposed by this report resolves itself into a device for hastening and facilitating collective bargaining. The public is excluded. The decision that may be arrived at is a private two-way contract and not a pronouncement of general welfare. The party of the third part hovers in the background waiting for the crumbs from the industrial table.

This brings us to the nub of the question.

Has society arrived at such a complex state that certain industrial disputes are properly a concern of government?

The newly created Kansas Court of Industrial Relations law says, "Yes."

The Kansas institution aspires to do all the benevolent things for labor advocated by the President's conference, but it wishes to go still farther.

To revert to the homely illustration first employed in this chapter, it proposes to protect the rights and privileges of the many people in the hall by reasonably restricting the liberties of the two contending men. It would provide means whereby the two men might get along better and adjust their difficulties, and then it would go a step farther and notify them that they must quit stepping on the toes of the people at large and interfering with the people's lives, liberties, and pursuits of happiness—which, of course, is simply good common-sense American doctrine.

The national community has become a crowded hall.

Organization, modern inventions, and rapid inter-communication and dissemination of information have brought people so close together that they are in constant danger of stepping on one another's toes. Miles have been annihilated. Organization, whether of capital or labor or any other interest, has spread its sensitive and powerful electric web over the nation, and it touches every department of life. Economic power of enormous magnitude has become a factor that affects the welfare of all.

In 1835, if all the milk-wagon drivers, coal-mine owners, railroad laborers, bakers, and meat packers in the United States had prevented their respective institutions from functioning for a month, it would scarcely have caused a ripple. In 1920 such a stoppage would cause the deaths of thousands of people and the worst panic in history, or a revolution that would change this government from one of the ballot box to one of economic leverage and the terrorism of raw power. What could have been done with impunity a few decades ago would now be intolerable interference with public welfare. What was simple exercise of freedom then would be a death blow to orderly popular government now. What was liberty then would be syndicalism, direct action, Bolshevism, now.

So gradually has this change taken place that it is difficult to realize to what extent we are at the mercy of economic agencies. In a few decades there has come the change from the hand loom to the central-

ized textile mill, from the oxcart to the four-track railroad system, from the individual home wood box to the gigantic fuel mines and plants, from the rural and village "hog killings" to the titanic packing-plant systems.

The new factor of economic leverage has crept into government itself, just as Marx predicted. It rests with government to decide how this factor is to be handled. This factor has been made possible through intensive specialization, organization, combinations of capital, the march of the machine process, revolutionary inventions, and lightninglike intercommunication.

Government recognized the factor of economic leverage in one form when it enacted antitrust laws and similar measures to curb the power of raw capitalistic organization. More than a score of years ago the battle of human rights against economic pressure suddenly took the form of a drive against the newly erected bulwarks of trusts and mergers. It has recently begun to dawn on the people that economic pressure may also come from the direction of labor, in spite of the fact that labor is invested with a justifiable sentimental value that never can attach to capital. The Kansas court proposes to relieve the pressure from both directions.

The force of a well-organized minority has already been felt in legislation.

When the four brotherhoods held the stop watch on Congress and brought about the enactment of the Adamson law, we saw a vivid example of coercion by

a minority armed with economic power. Nobody even pretended that the majority of the people favored the Adamson law. That phase of the question seemed to have escaped notice. Congress and the administration surrendered to the threat of minority force.

The uncomfortable inference is left in Chief-Judge White's opinion on the Adamson law (*Wilson vs. New*, 243 U. S.) that Congress was compelled to enact it to prevent a nation-wide strike that would have paralyzed the industry of the country and would have brought widespread suffering. Of course that was not the only consideration in upholding the constitutionality of the law. If it had been, there would be good reason for feeling apprehension at the drift of it.

The old American Federation of Labor idea of a strike was that of a cessation of work to bring about better wages or working conditions. As long as the leaders stuck to that idea they were on comparatively safe ground. But the "borers from within" came, and other conceptions of the strike were introduced —the cessation of work to hinder or stop the production of vital essentials, and thereby coerce society by show of force. This was the syndicalist or Marxian theory, related to the general political strike and direct action.

The second conception of the strike is not dangerous, perhaps, as long as the disease is confined to the areas of identified Bolshevism, but the trouble

is that it is unconsciously adopted by many well-meaning people who would indignantly repudiate any kinship with the direct actionists.

The London *Times*, in speaking of the recent French railroad strike, puts the situation in this clear language:

It is the fundamental issue for all modern democracies. Is the majority to govern or not? If it is, the people everywhere must see that the responsible executive shall govern, and nobody else. The executive is responsible to them, for it is responsible to the representatives they have freely and constitutionally chosen. To challenge it is to challenge them; to defy it is to defy them. They may insist upon its dismissal if it is serving them ill. They cannot leave it in office and suffer it to be thwarted by sectional organizations of any kind without derogating from their own authority, and from the principle of majority rule. A hundred citizens organized in this or that corporation have no better constitutional way than a hundred men who are not organized. To attempt to obtain it against the will of an unorganized majority by virtue of their organization, of the menaces it can employ, and the loss and suffering it can impose, is a tyrannical abuse. Organizations of the kind have shown a growing pretension to substitute themselves for constitutional governments, or to dictate to those governments the policy they are to pursue. They are threatening to become parasitic governments themselves, eating into the very essence of democratic rule, degrading by threats and violence the constitutional government into their tool, and the mass of their fellow men into their submissive serfs. In France the issue is now fairly joined, and we are glad to see that M. Millerand and his colleagues purpose to fight it without flinching.

Albert Rhys Williams, in his recently published book, *Lenin*, quotes the Russian chief as follows:

Every system of feudal-aristocratic social control in Europe was destined to be destroyed by the political-democratic social

control worked out by the French Revolution. Every system of political-democratic social control in the world to-day is destined now to be destroyed by the economic-producers' social control worked out by the Russian Revolution.

This is merely a restatement of Marx's familiar *Law of Economic Determinism*, which holds that government should be a function controlled by pure economic facts; that production of food, clothing, and other utilities constitutes the sole right to govern.

So strongly has this theory obtained hold in British labor circles that early in March, 1920, more than a million out of 3,870,000 union-labor votes were cast for direct action as opposed to political action in the matter of trying to secure the nationalization of mines.

It is almost inconceivable that such an issue will ever come to a serious stage in the New World, for Americans believe their system of government is too firmly established; but the Lenin theory cannot be dismissed as a mere bugaboo. Even now we find such propaganda papers as the *Non-Partisan Leader* boldly painting the beauties of the Russian economic government as opposed to political governments. Economic has a better sound than political, to the superficial reader. It should be understood that the theory of Bolshevism is mentioned in this book as a background, and not as an integral part of the picture. There is no intention of linking organized labor with Bolshevism. The American Federation, in its rank and file, is strongly against Bolshevikistic

theories, especially when the American workingman sees the disastrous effects of Sovietism—the compulsory labor, the twelve-hour day, the absolute prohibition of strikes, and similar paradoxical manifestations. The purpose herein is to depict the logical conclusion of the use of economic pressure, whether it comes from the small minority of organized capital or the small minority of organized labor.

It all sums up in the proposition that the people will have to take over a part of the responsibility of administering economic justice as a political function—using the word “political” in its good and proper sense—otherwise the pent-up flood of economic grievances will increase and break the strong bonds of democracy. The political rule of majorities otherwise will be disregarded and resort will be had to tooth-and-claw force. The responsibility of the people, through government, is to restrain and properly direct the forces of both capital and labor and see that they do not grow into agencies of potential destruction, all the more dangerous because of their majestic toppling splendor. This is why the industrial court is philosophically sound and inevitable as an evolutionary development in society. It is that or economic rule. It is the American preventive of Leninism. It is the American preventive of unrestrained capitalism. It is the balance wheel on some economic tendencies that have been “racing.” A more extended discussion of the economic theory of government will be given in a subsequent chapter.

The radical is prone to trace existing evils to the "capitalistic system." A change to a socialistic or communistic system would not help, however, for the latter would have the same defect as the former—the unrestrained use of economic power. Such a change would be merely jumping from the frying pan into the fire. Witness Russia. The only genuine method of relief is through agencies carrying out the American ideal, which, in its essence, is the applied Golden Rule.

When government stepped in and began to regulate capital, the capitalists protested that their "liberty" was being restricted. The same protest is heard when government proposes to regulate industrial disputes. Labor leaders protest that their "liberty" is being restricted. Both elements must come to recognize the eternal fact that liberty is only a relative term. The liberty exercised by one man may constitute his tyranny over another man. No man liveth to himself. The only perfect liberty is found on a desert island. As men become more civilized they find it necessary to surrender a part of their liberties in exchange for the advantage of complex relationships.

The feature of the Kansas law confining its restrictions to strikes whose intent is to hinder or restrict or stop production of vital essentials, is the central thought that divides legitimate from illegitimate cessations of work. The Kansas law seeks to prevent only the syndicalist form of a strike. When

this feature is fully understood, and when it is fortified by legal decisions—as we confidently expect it will be—a new chapter in American industrial law will begin.

However, it is a mistake to assume that the Kansas law is concerned only with the prevention of strikes. It also forbids lockouts in the four essential industries mentioned, and it has teeth in it for the employer as well as for the employee. It proposes to curb the tyranny of capital just as stringently in its industrial relations as it curbs the tyranny of radical labor.

The court is given wide powers of investigation. It is given the power to order changes in the conduct of industries in the matter of minimum wages, hours, and working and living conditions, rules and practices. Any appeals from the decisions of this court go directly to the state supreme court, and transcripts of evidence are furnished free to litigants. It is the only court in the nation where a man, whether he wins or loses, may have a full and free hearing without the payment of costs. "It might well be called the court of the penniless man," says Judge Huggins.

Collective bargaining is sanctioned, and incorporated unions may appear through accredited officials. An employer may not discharge an employee or discriminate against him because of the fact that he may have testified or signed a complaint in the court.

The law enters into the humanitarian phase of

labor and provides for preventive and constructive means for the avoidance of disputes. It provides for publicity, and it gives every possible opportunity for arbitration, conciliation, the establishment of employee representation, and other enlightened measures. It encourages settlements out of court. Then it says of certain strikes and lockouts, to employer and employee alike, "Thus far you may go, and no farther."

It provides machinery for a helpful study of labor conditions, and, what is more important, it permits the use of court orders correcting bad conditions. According to a plan made in February, 1920, shortly after its establishment, the court conducted an exhaustive survey of the coal-mining regions, and collected data on the cost of living, housing conditions, and other factors bearing on the welfare of labor. Its powers are commissionlike as well as judicial. It has a direct and positive manner of going at the heart of a difficulty and is not in danger of being neutralized by lack of power.

Philosophically, and in general, the foremost concern of the Industrial Court is to protect the rights and lives of the public, including employers and employees. It goes back to first American principles. It guides away from the path pointed out by Lenin. It resists the deep, philosophical motive of Bolshevism, which is the theory of economic force. It restores to the majority something that seems to be drifting away. That something is just as much a

part of life, liberty, and the pursuit of happiness as anything for which the fathers fought. That something is the great prize of industrial peace and industrial justice, which affect the public just as much as they affect capital and labor.

Strikes, lockouts, and other oppressive caveman measures can no longer be considered mere private disputes under our finely organized society. The world is getting too crowded and its activities are becoming too scientific. Watches cannot be repaired with monkey wrenches and crowbars. There is no valid reason why industrial disputes should not be settled by the government of the people than there is a reason for settling debts by the use of fists or clubs. There is no valid reason why the majority should submit to tremendous hardship because of quarrels between members of a minority, when such quarrels can be settled justly by the majority through law. Courts are not perfect, but they stand between savagery and civilization. If criminal and civil courts can be trusted, industrial courts can be trusted. "Let the safety of the public be the supreme law."

# X

## GOVERNMENT AND ITS POLICE POWERS

**A**NY investigation into the proposal to bring industrial disputes under the clear-cut power of government necessitates an exhaustive inquiry into the very nature of government.

In its basic theory government is not a complex or puzzling thing. In general, it is the effort to take advantage of the social instinct to advance the general welfare by establishing a set of just and workable rules that will eliminate destructive and wasteful friction.

Primitive government, by chiefs, rulers, kings, and other autocrats, had its roots somewhere in the belief that wisdom and strength came directly from divinity. This promoted the idea of succession. Hero worship, deserved or undeserved, was responsible for the long and persistent life of autocratic government.

As time went on men found that the rule of succession, through primogeniture or otherwise, did not always work out well, for mediocre or degenerate rulers sometimes sat upon the throne, and so the effort to choose executives from the ranks became more and more vigorous. At the same time the so-

called divine rights were more and more ignored, and the kings were shorn of their absolute powers.

Upon reflection it seems almost incredible that in this very generation, in one of the most enlightened nations of the world, there was a ruler who said, "We Hohenzollerns take our power from God." Autocracy dies hard and it feeds upon intellectual indolence or docility.

There was a deterrent to democracy, however, that argued powerfully upon the side of monarchy. It was the argument that "the tree is judged by its fruits." If a king was just and kind and administered affairs wisely, he produced the effect of vindicating the principle of monarchy itself. This confused the issue.

Gradually, through the ages, however, the people came to realize that it was not safe to lodge power in the hands of the few, even though the power was wisely used in a majority of cases. Government was taken over by the people.

The drift from autocracy to self-government was a process of guaranteeing justice to all. Always the effort was to do away with special privilege. It was a self-evident truth that autocracy meant special privilege, so autocracy had to go.

But the ostrich is not made safe by putting his head in the sand. Neither are people made safe from autocracy because they change the names of their autocrats or give them different channels of activity. Self-governing nations are always on trial.

Democracy is not a goal, but a continuous fight.  
Human liberty is not a dream, but a battle.

England has a king, but in some ways its government is more responsive to the popular will than ours. This is especially true in regard to the conduct of public affairs. While we have laid stress upon relieving ourselves of the forms of autocracy, have we permitted the substance of autocracy to return under new guises?

Dethroning a monarch is only one step in the march of democracy. Self-government is not static, but kinetic. It is not a settled state of affairs, but rather a working power constantly throwing off new autocracies in new forms.

Government, particularly government of the people, is sensitive to changes in customs and manners. New conditions continually require new laws.

In 1850 nobody but an insane person would have suggested a law providing for the regulation of airplane flights. In 1800 Kansas needed no speed-limit laws. In the Middle Ages it was quite proper to carry weapons.

A study of the law of primitive societies affords a wealth of example as to the progressive and mutable nature of government. One of the laws of the Westgoths, in the year 1200, was this:

If a wild beast takes cattle from a herdsman and the herdsman gets no remnants from it, let him lose as much of his hire as the animal is worth. If he gets remnants then he is not at fault.

If an animal lies in the mire, dead, then shall the herdsman

stick his staff by it, place his hat under its head, or his cloak, or break brush and place under it. They shall testify that carelessness has not been the cause.

The laws of primitive society were concerned almost wholly with the simple pastoral and social customs of the day. They reflect faithfully the crude state of life. They dealt with acts and combinations of circumstances which are unknown to-day. The intent of the laws was to keep society going smoothly, and as far as possible without loss of effort or wealth. Doubtless the laws succeeded in that intent. We have no right to scoff at their crudity.

As soon as it was found that government was inadequate to cope with changing economic and industrial conditions, the laws were modified accordingly. Sometimes violent revolution was the resort, for in the primitive state of society power was usually vested in an autocrat and the autocratic minority could not be displaced or controlled by the orderly process of the ballot, as in a modern democracy.

A revolution might be started by a majority against the minority. In a republic, of course, such a thing is unnecessary, for the majority has the power to work its will without resort to violence.

As inventions multiplied the lot of the poor workers was improved, and the serfs became more enlightened. They became discontented with their lot and made successive demands upon the feudal lords. In the desperate struggle for existence that some-

times obtained, the law of self-preservation brought on bloody turmoil and excesses, in the name of economic betterment.

Some take this fact to mean that the struggle for existence is the be-all and end-all and that economic determinism should be the sole factor in government. The fallacy of this will be discussed in a subsequent chapter. No one can deny, however, that one of the chief problems of government always has been to adapt itself to changing economic conditions.

The principal divergence in opinion between socialistic and republican schools of thought is that Socialism would handle the economic machinery by government ownership, while republicanism would handle it by private ownership, applying government supervision where private initiative failed to produce efficient and satisfactory results. Republicanism denies that the sole end of government is to provide the material necessities for its people. It believes that self-reliance and stamina are best preserved by encouraging private initiative. Looking with disfavor upon paternalism, it believes that a reasonable amount of "root-hog-or-die" tends to develop the best qualities of citizenship.

Under any system of government, however, it must be recognized that if the administration fails to cope with new economic problems in a comprehensive and intelligent way, it will fail, and possibly go down in ruin.

This is what gives us our political rather than an

economic form of government. Starting with the obvious proposition that some sort of organization is necessary for the preservation of civilization, history has proved that political social control is the only workable basis of union.

Even if we should eliminate, for the sake of argument, the element of patriotism and other idealistic features of political government, and regard the question from a cold-blooded standpoint, it would soon become evident that the political unit is superior to the economic unit.

In the first place, the economic group must be dependent upon society as a whole for the consumption of its products. Even a monarch would be helpless but for the loyalty and co-operation of his subjects. "No man liveth unto himself." It is like whistling against the wind to say that "all society must be made into a producing class," because nobody has ever devised an intelligible method of defining absolute production. As civilization advances specialization increases, and we have primary, secondary, and tertiary producers, and so on. We have many people who are economically superfluous, to be sure. It is always the proper duty of society to purge itself of drones. We have many people who may appear to be economically superfluous, but who are nevertheless performing functions that are demanded by primary or secondary producers. Even the chair pushers on the Boardwalk at Atlantic City are organized into a labor union! Let the reader

diagram for himself the remarkable economic scheme there involved. Who can satisfactorily define production?

While it will always be the proper purpose of society to cause every able-bodied individual to do his part for the general welfare, it is obviously impossible to bring about such a state by direct compulsion.

It is plain that the primary economic producers must accommodate themselves to the rest of society upon terms of mutual good will. In the matter of farming, for instance, it does not take as many workers now as it took one hundred years ago, because modern implements have enabled the individual farmer to take care of a much larger acreage and yield. Not all people can be farmers. Not all can be brick masons. Not all can be fishermen. Not all can be miners. The tasks have to be divided and subdivided. Production, under normal conditions, will automatically work out by the inexorable law of supply and demand, the proper proportion of primary producers compared with other groups. In abnormal times, as existed during and after the World War, the supply and demand were interfered with, hence the inequalities and frictions that otherwise would not have been so intense. The primary producers must depend upon all of society—the general public—for co-operative support.

In the second place, the economic producer has an inherent obligation to co-operate with his fellow men.

It is not sufficient that he co-operate with the members of his own select group. He must regard society as a whole. When people are cast upon a desert island they are inherently equal in the task of sustaining the community life. Fortunes change. The rich become poor and the poor become rich, according to ability or industry or luck. Establish a definite classification of men to-day and a regrouping becomes necessary to-morrow. Society as a whole is in a state of constant change in the matter of its productive members.

The essential spirit of civilization, according to Dr. Franklin H. Giddings, is nothing more nor less than a passion for homogeneity—a resistless desire of the social mind to secure to the utmost possible degree sympathetic like-mindedness throughout the population. The social instinct must conquer the primitive love for power. This necessarily means that the political unit must be supreme. It must include, and supersede, as far as government is concerned, all economic units. Economic government must be subject to political government or political government must vanish altogether, and such a vanishing would mean the disintegration of society into warring groups that would grow smaller and smaller with the inevitable growth of selfishness as a governing principle. Force is the background of law and government, but it must be force exercised by all the people—not by certain select groups—or it must ultimately fail.

We quote again from Giddings:

By bringing allied populations together in one embracing political organization, by perfecting the machinery of government, by eliminating causes of antagonism, civilization has also put an end to innumerable forms of conflict, to innumerable unnoticed wastes of energy, and so has liberated for other expenditures enormous stores of mental and physical force.

The waste of energy, caused by industrial conflict, has been enormous and it has been antisocial, not only in the materially productive sense, but in the matter of good will. Industrial conflict has given economic class groups undue prominence. Government certainly must, and does, have the power to eliminate the waste and useless battle, at the same time advancing the welfare of the producers and bringing the contending elements together so they may often shake hands across the table. The primary and best function of any court of equity is conciliation.

"Most practical economic questions involve directly or indirectly the question of governmental activity in economic affairs," says Charles Jesse Bullock of Harvard University, and he declares that the first duty of government is to protect persons and maintain order.

He also points out that many of the old restrictions upon the relations of employers and employees, as well as upon other activities, were abolished during the first half of the nineteenth century, and the *laissez-faire* doctrine became popular. But, he re-

minds us, the old restrictions were no sooner removed than people felt obliged once more to governmental action to remedy disorders that were found to exist in modern civilized life, and government again stepped in.

The antitrust laws of recent years were symptoms of this feeling. So also is the adoption of tentative and pragmatic municipal ownership. As pointed out before, however, there is a sharp divergence between state or municipal ownership and state supervision.

The industrial court is an inevitable assertion of the necessity of remedying a very widespread and fundamental disorder which is not only a cause of material waste and antisocial friction, but a cancer that eats at the very roots of political government itself. It deals with the overpowering and overshadowing issue of modern democracy.

Most economists, according to Professor Bullock, now hold the view that "government should extend its functions into any field of economic activity where the best results can be secured from such a policy."

That does not mean government ownership, necessarily. It may mean government supervision through its courts or commissions. Take your choice.

In calculating the proper sphere of governmental interference in the industrial conflict, it must be remembered that there are important factors tending to increase that conflict as time goes on, rather than to decrease it.

One factor is the dehumanizing of industry wrought by specialization. When a man stands at a die and makes nothing but a certain small part of an automobile engine all day he becomes a part of that machine and loses his individuality. The creative instinct that stimulated the primitive artisan is smothered in quantity production. With quantity production comes the lack of personal contact between employer and employee. Class consciousness and suspicion are nurtured in such atmosphere. Unless there is a corrective agency the worker is bound to feel that he is merely an insignificant cog in a colossal and heartless machine. Industrial courts, with their concomitant functions, can remedy this by going into the living and working conditions and promoting the propaganda of employee representation, conciliation, and a renewal of personal contact. They can act as the lubricant between the clashing groups. It is contended that such affairs should be left to private initiative. But private initiative has not responded generously enough, and the warfare has become so bitter that it threatens the lives of the people. The people must have power to give dignity and force to the machinery of industrial adjustment. Such machinery may make it possible for laborers to pursue some activity out of hours to develop self-expression and individuality, instead of spending such hours under the tutelage of radical leaders in the assimilation of suspicion and hate.

In the earliest forms of government the executive

monopolized the field. He was the court of first and last resort. As civilization developed, the executive took on some of the character of the judiciary. He recognized the need of a code and he handed down laws. Some of the Roman emperors exemplified the coming of the judge into society as a guiding force.

The history of Anglo-Saxon laws is blurred in the mists of the ages. Prior to the Norman conquest the Anglo-Saxons did not make laws, it is said—they merely published abroad what already existed. It did not occur to them that they were exercising any creative legislative function. When the Norman kings came they introduced the Roman idea of executive-made laws. This gave impetus to government which may have been needed to stir people out of their complacency and subserviency to tradition. But they finally rebelled when the instinct of self-government and liberty came to the top, and they assertively formulated a set of demands known as the Magna Charta.

This charter, wrested from the kings, dealt with a number of affairs intimately connected with the economic welfare of the people, as well as with other things. Among the subjects treated were the forest laws, uniformity of weights and measures, freedom of commerce to foreign merchants, and matters of tenants' dues. Religious freedom was one of the topics treated. Various civil liberties were demanded.

Gradually, out of such efforts as this the process

of legislation was evolved. The old formula of the sleeping Orient—"It is written"—was no longer sufficient. The people took the initiative.

In the process of evolution the government naturally divided itself into three branches—executive, judicial, and legislative. With the onward march of autonomy the legislative branch naturally has grown in importance, for it represents the efforts of the people in ruling themselves.

And what is law?

It has been well said that "law is the crystallization of public opinion." This applies, of course, to settled and permanent opinion—not temporary gusts of passion or prejudice.

Temporal law has nothing sacred or immutable about it. Law must be amenable to human needs, or it fails.

If the fundamental constitution of a nation does not accommodate itself to new economic conditions, so as to protect the welfare of the general public, it is a sign that the constitution needs to be changed. And the way to constitutional change is paved by statutory enactments. That is the way of a republic. The legislature is the advance guard, blazing new paths, and the judiciary consolidates the worth-while gains. Sometimes legislatures have to retrace their paths and acknowledge mistakes, but usually they point out something constructive that was not there before. And when legislation comes as a perfectly obvious method of preventing social and economic

friction, it is fulfilling the normal and necessary function of democracy. If it seeks to give justice to the contending factions, prohibits nothing but the manifestly harmful acts, and prevents waste and suffering, it is amply justified. It is accomplishing the purposes for which government was instituted among men—to secure their lives, liberty, and pursuit of happiness. Thus is a democratic government evolved.

If the political unit is supreme, including the economic units—if economic organization is subordinate to political government—then it must necessarily follow that the police power of democratic government properly extends over the field of industry and commerce. The extension of police power must necessarily keep pace with the extension of special-interest organization.

Reviewing the gradual formation of laws, and inquiring into the question of how far laws may interfere with that which we call “individual liberty”—though the word is sometimes abused—we find that police powers have a broad scope and significance.

The Supreme Court of the United States has given us this revealing definition:

They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a state passes a quarantine law, or a law to punish offenses, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power—that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of this power that it legislates.

Freund, in *The Police Power*, says:

The police power restrains and regulates, for the promotion of the public welfare, the natural or common liberty of the citizen in the use of his personal faculties and of his property.

He says, further:

The maxim of this power is that every individual must submit to such restraints in the exercise of his liberty or of his rights of property as may be required to remove or reduce the danger of the abuse of these rights on the part of those who are unskillful, careless, or unscrupulous.

In the case of *Noble State Bank vs. Haskell*, 219 U. S. 110 (1911), Mr. Justice Holmes of the Supreme Court hands down this opinion:

The police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or the strong and preponderant opinion to be greatly and immediately necessary to the public welfare.

Every time laws are made that set forth new fields of police power, there is more or less objection on the ground that personal liberty is being infringed upon. But each time, in the case of justified laws, it is found that the principle of the greatest good to the greatest number vindicates the enactment. That principle is triumphant and must prevail.

Going back to the very beginnings of government, and observing its evolution—weighing the political factor against the economic and the police power against the *laissez faire* of industry—inquiring into the derivation of governmental power, we are impelled to believe that the public does have the right

to limit the so-called liberties of the individual whenever it is shown that restriction of those liberties is in the interest of the public. Regardless of prejudices, traditions, and customs, the weight of public policy finally must prevail. The fear that an improper use would ever be made of the police power is more than offset by the knowledge that public opinion always registers in the courts. The steady progress of courts is indicated by the plain probability that twenty-five years ago a law such as has been passed by Kansas might not have been held constitutional by the courts, in spite of early decisions that seem favorable.

A few very pertinent observations upon the matter of police powers as applied to the Kansas Industrial Court have been made by F. Dumont Smith, of Hutchinson, Kansas, one of the able lawyers whose study of the industrial law has been most valuable to us. Some of Mr. Smith's cogent points are:

No court has ever attempted to define the limitations of the police power of a state. It is the broadest and most undefined of all the governmental powers, because it is the power to which all other governmental functions, bodies, and tribunals are subordinate and subservient. In fact, the police power is the final end and aim of civilized government. It is the power to which all other powers lend their support. Edmund Burke once said that the whole state and power of England, its kings, lords, House of Commons, its army and its navy, were constituted and maintained for the purpose of getting twelve honest men into a jury box—in other words, a settlement of dispute by law.

But the institution and processes of the courts exhaust but a portion of the police power of the state. A vast reserve of the police power remains to be administered by the executive arm, what is commonly known as the administrative branch of the

government. And let me say here that a dictum of an early-English court, attempting to distinguish between the administration of justice as an independent attribute of the English Constitution and the police power, which was the King's prerogative, has misled many law writers into separating the administration of justice from the general police power.

Courts administer police power by certain long-recognized formulæ, but it is, nevertheless, the police power of the state that is thus exercised. But after the courts have functioned, there remains a vast domain of police power, exercised by the administrative arm, which deals with the general welfare of the people; public health, the maintenance of public peace, public morals, and even the comfort and convenience of the citizens. All of these are under the watchful exercise of the police power. There is this clear distinction between the exercise of the police power by a court and by the administrative arm. The court is inert until its jurisdiction is sought and invoked by appropriate formulæ. A court cannot go out and seize a criminal and try him until a complaint has been presented and a warrant issued. The court cannot collect your debt until a complaint has been filed against the debtor. A court cannot do equity until the equitable jurisdiction has been set in motion by an appropriate bill. But the administrative arm acts *ex propria vigore*. It acts without complaint, without warning, and without investigation. It may act upon suspicion or surmise. It has inquisitorial power; power to subpoena witnesses, and to compel the production of books and papers without any complaint being filed, wherein it differs from a court.

You cannot swear a witness in court until there is a legal controversy before the court. The exercise of the police power by the administrative arm is swifter of execution, speedier in action, and presents many advantages over the rule-hampered action of the court. That is the reason why we decided to make the Industrial Court an administrative body rather than a judicial body. As a court it would have had advantages. It could punish for contempt; it could execute its own orders. You cannot confer administrative functions upon a court, but you can confer quasi-judicial powers upon an administrative body, the power to investigate, to take evidence, to deliberate,

to weigh, and to find the facts. These powers can be conferred upon a legislative tribunal, or upon its arm, a committee sitting for the purpose of investigation.

We have had a distinguished example of it recently in the committee of the Senate of the United States which has been investigating campaign expenditures—investigating them so thoroughly that many earnest workers in both parties have found themselves without a job as a result of this investigation. This investigation, with its illuminating evidence, would have been impossible in a court.

The administrative arm can anticipate labor troubles and strikes by investigating the conditions surrounding the mine or factory where disputes and industrial troubles are reaching an acute stage. Before a strike has been called, before there is an overt act of industrial warfare, it can publish its findings so that the public will know whether the worker is getting a fair wage, working reasonable hours, giving an honest day's work for his wage, and so that the public can know whether the business of the employer can reasonably stand shorter hours or an advance in wages, without increasing the price that he charges the consumer. In fact, if these inquisitorial powers of the court were all its powers, these things were all that it could do, it would be worth the cost. Publicity, like the sunlight, is a great germicide. No sociological wrong can stand the light of day. The truth will kill it. If everyone knew the wholesale and the retail cost of the articles which he buys, there would be no profiteering.

Whatever doubts there may be as to the constitutionality of some parts of the Industrial Court law, no one has ever questioned the right of the state, under its police power, to establish this administrative body and to give it these inquisitorial powers.

It is true that Mr. Howat, who is now in contempt for refusing to obey the process of the court and to testify, has appealed to the Supreme Court of the United States, but that court, in the Interstate Commerce case, in the 250 U. S., has decided every question, raised by Mr. Howat's appeal, against him.

Coming now to the question of police power, it is the broadest, the most unlimited, the most illimitable of all the powers of government. Outside of a limited number of cases where the police power affects the rights of property, the right to bear

arms, public assemblage, and the freedom of religion, where the police powers are limited by certain amendments to the conditions, the only boundaries, the only circumscriptions of that police power, are that the exercise of it must be reasonable and that it must tend to public welfare. No respectable court and no text writer has ever attempted to go farther than this in setting boundaries to the power, and each case is decided upon the particular and instant question of fact.

It may be said that the police power is the end and aim and final object of all civil government, because the end and object of all civil government is to promote the general welfare and happiness of the citizen; and it is with that that the police power more closely deals.

The police power greets you at the threshold of life, where it prescribes the qualifications of the doctor and the nurse who bring you into the world. It follows you to the tomb, where it regulates the cemetery where your ashes are finally interred. And during all that interval from the first puny wail of the new-born child to the death rattle of the dying, it surrounds you every moment with its invisible, ever-present protection. Waking or sleeping, alone or in company, in the crowded street or on the lonely prairie, the police power is there, protecting not merely your life, your liberty, and your property, but protecting your health, the morals of your community, and safeguarding the comfort and convenience of your daily life.

The police power is the only power that can take and destroy private property for the public benefit, without compensation to the owner, as where it destroys an unsafe or unsanitary building. It is the only power that can destroy the sanctity of a contract which the Constitution says shall be held sacred. It is the only power that can override a treaty which the Constitution says shall be the supreme law of the land, as was held in the New Orleans quarantine cases, where a health regulation of the city of New Orleans set aside a treaty stipulation between America and France. It is the most comprehensive and most minute of all the powers of government. It protects the cattle of the Kansas farmer against Texas fever, and it protects the migratory birds against undue and continuous slaughter. It regulates the length of time that the mill whistle may blow

without undue disturbance to the peace and quiet of the neighborhood, and it stops the great liner with its thousands of passengers, at the threshold of the country, until every individual has proven his right to be admitted upon the ground of his physical and moral healthfulness.

It is the most flexible of the governmental powers, adjusting itself almost instantly to every change of conditions. The police power, which adequately regulated the movements of the stage coach, was found sufficient without any extension of power, by merely adapting established principles to new conditions, to regulate the railroads, the steamboats, and the automobile, and shortly it will reach its long arm into the sky and regulate the air lanes of the aviator. Every time a new and dangerous mechanism is invented, whether for labor or for pleasure, the police power seizes its control and regulates it for the safety of the public.

Its two greatest functions are the protection of the public health and the public peace, and these are the foundations upon which, mainly, the power of the Industrial Court rests. In the first place, the legislature defines the necessities of life as food, fuel, and clothing. This is not a legislative fiat; it simply recognizes the primal necessities of life in the temperate zone. A man may live, love, and be happy in a tent, a cave, or a dugout, but to be well, to be healthy, he must have food, fuel, and clothes. The state is not concerned with whether a man has one suit of clothes or a dozen, one meal a day or five. It is not concerned with whether he has fuel enough to warm a ten-room house or one room. But it is concerned, and the public health demands, that every family shall have so much food, so much fuel, and so much clothing as shall maintain its health, keep it in decent comfort, and provide for the sturdy upbringing of the future of the race.

Whenever a strike, a shutdown, or a lockout threatens such a shortage in these necessities as endangers the public health, then the state has the same interest in the strike or the lockout that it has in an approaching epidemic of contagious disease. The state need not wait until smallpox or yellow fever has invaded a community. It may quarantine against these evils far in advance, prohibit persons coming from an infected com-

munity from entering the district where the public are yet whole. It may shut up an infected family within its dwelling indefinitely, to protect the whole from the infection. This prohibition against any interference with the continued adequate production and distribution of the necessities of life applies equally to the employer and to the employee.

But there is another police power equally important, and that is the protection of the public peace. If a strike of any considerable size endangers the public peace, the police reserves are put on duty; the sheriff swears in a swarm of deputies; frequently the militia is called out; nearly always there is bloodshed, loss of life, destruction of property; in fact, these things are almost inevitable. They have come to be regarded as an integral part of the strike, inevitable factors of this private warfare, just as the killing and maiming of man is inevitable in public warfare. The state has a right to anticipate violence and prevent it, as well as punish it after the act. If I threaten our chairman with violence he can have me bound over to keep the peace. In fact, there is now in the courts power of prevention of such breaches of the peace by injunction. It is a power that has always been questioned, often denied, but generally upheld; but usually the power of the court cannot be invoked until the danger line is reached, until, in effect, there has been an overt act of violence, interfering with the lawful possession and operation of the employer's property. So this law says that whenever there is a strike, or the danger of a strike, that threatens the public peace of a community, this court shall at once begin to function; it shall examine the merits of the controversy, it shall find, determine, and publish who is right and who is wrong; it will ascertain and announce whether the workmen's hours shall be shorter, whether his wage shall be higher, whether the employer of the workingman is entitled to a higher price for his product in order to pay such higher wages.

It would seem that the police powers which have been sanctioned by the legislatures and interpreted by the courts are sufficient for the structure of a civilization which contains as its essence the protec-

tion of society. The weight of public opinion, under conditions of growing economic and industrial power, unquestionably supports the abolition of strikes that are injurious to the public welfare. No one can doubt that for an instant. The conclusion, therefore, is plain. The Industrial Court, established under the unimpeachable powers of the state, and supported by a logical train of governmental developments, is the logical answer to the growing industrial problem. It has been clearly demonstrated:

First, that government is ultimately and cumulatively what people make it and what they want it to be, regardless of tradition or precedent or temporary autocracies.

Second, that the police power of government is its most important function.

Third, that the police power of government has a clearly legitimate and proper domain in industrial disputes, and may be justly invoked.

Fourth, that the growing complexity of civilization has made it necessary to bring police power to bear in new fields hitherto considered private domain.

Therefore the people, for whose benefit government exists, may extend the arm of government and regulate any activity that threatens their lives or health. If they could not do so it is plain that government would be an abject failure.

Hon. George W. Wickersham, in the annual address before the New Hampshire Bar Association, in its 1920 gathering, discussed the Kansas Industrial

Court law with particular reference to the police powers of government, and gave an exceptionally brilliant and instructive exposition of the precedents that argue for and against the law. In one of his utterances he made the observation that the Kansas law was a long step toward state Socialism, basing his statement upon the theory that the assertion of police power, when carried to an extreme, would eventually bring about complete government control over private enterprise and then state ownership.

Not wishing to presume to take issue with Mr. Wickersham on my own authority, I would nevertheless, call attention again to the very pertinent point made by Mr. F. Dumont Smith, who takes the general ground that police power, which is inherent in the Kansas Industrial Court law, is in reality an emergency resort, and not a permanent invasion of private initiative such as would likely lead to paternalism.

It is true that the court has a continuous function of smoothing industrial relations, but the particular function that finds expression in stopping strikes and fixing wage scales is an emergency power and not one that may be developed into permanent price fixing or tyrannical invasion of personal rights. The fear that such powers would eventually find expression in the fixing of price and absolute control of farm products would, therefore, seem to be unfounded, for it would be inconceivable that there could be such

a complete tie-up of food products by farmers as to threaten the lives and health of the people.

The chapter on "Strikes," elsewhere in this book, as well as other chapters, explains why this court, under police powers, may prevent or prohibit a strike in an essential industry and still be inoperative in the case of mere quitting of work. Mr. Wickersham also brings out this point very clearly. Perhaps there is an analogy that runs all through the workings of the court—namely, that the extent of any given activity or condition certainly does affect its legitimacy. Of course, discrimination must be used so that the principle of police power may not be carried to an extreme.

Mr. Wickersham himself answers the fears of those who hold up the bogey of "state Socialism" when he quotes the keynote utterance of Aristotle upon the police power:

All governments rest upon the principle of self-preservation, and at times extreme measures must be allowed.

That means in case of emergency.

There can be no emergency expressed in state Socialism, for that is a settled form of government.

The virtue of the Industrial Court as affecting grievous industrial disputes is its potential ability held in reserve for emergencies. That government should have that potential ability would seem to be almost self-evident.

## XI

### INVISIBLE GOVERNMENTS

**S**HALL government be by the people as a whole or shall it be by organized interests?

Leon Jouhaux, former secretary of the *Confédération Général du Travail* (General Federation of Labor, France), says:

The C. G. T. forms the new society within the shell of the old. . . . It proposes to become the local administrator and regulator of production in the new society.

His description of syndicalist or communist doctrine is authoritative, and in line with the principles of Marx and Lenin.

They base their conception of government upon the so-called law of economic determinism, which is stated thus:

The thoughts and actions of men are determined by the manner in which they obtain their living.

Abner E. Woodruff, who upholds this theory, translates it thus:

Carried over into the fields of historical economics and applied to the science of sociology, this law is translated into the theory of the materialist conception of history, which declares

that all the social phenomena in any historical epoch may be explained upon the basis of the method of wealth production and exchange existing at that time.

The syndicalist and communist base their whole theory of government upon this idea.

If this line of research seems too abstract for the discussion of the everyday labor problem, it would be well to remember that this philosophy is found in hundreds of bunk houses and "jungles" where the I. W. W. gather and discuss their doctrines. The above is taken from a book called *The Advancing Proletariat*, which is used in great numbers as propaganda by the radical labor groups. If the average American citizen is to understand the great unrest, the tides of radicalism that are at work, and the inner meaning of the "boring from within," he must understand the food upon which the radicals have been feeding. If he does not understand this food he cannot understand the meaning of a strike from the radical's viewpoint. He cannot understand the radical's idea about government. Further, this book says of the proletariat:

It realizes that the proletariat, operating the machinery of production, and really in possession of the wealth of the world, is in a position to dictate the terms of life to all society if it merely secures the consent and co-operation of the members of its own class.

And then, speaking of continuing production, which, it holds, is the only test of governmental fitness, it says:

Voting *en masse* at the polls is no evidence whatsoever of such ability, and to teach this class that its way to freedom lies primarily through the ballot box is a most miserable miseducation.

And then, to clinch the argument against the ballot box, the book says:

In the fields of politics the program of the proletariat should be "Pressure rather than Participation," a program heretofore ably pursued by the Plutocrats.

In this short paragraph is condensed a remarkably vivid, if crude, picture of the development of the "invisible government" in the United States, which heretofore has been monopolized by the huge capitalistic interests. It shows at a glance how unrestrained capitalistic greed is the breeder of Bolshevism. It shows a strange and unholy alliance of purpose between red-minded radicals and red-handed profiteers. It shows a sardonic and sinister desire to ride roughshod over the rights of the majority and disregard the principle of electoral franchise. This doctrine would have the country rush from one bad extreme to the other bad extreme.

Is there any danger of that?

Before dismissing the proposition as absurd it is well enough to study the whole field of syndicalism and decide whether some of its implications have been accepted without accepting the form.

Gathering the preceding quotations in connection with the abundance of similar propaganda now current, we see that the syndicalist theory of government is based wholly and frankly upon materialism.

It is one thing to recognize the presence of economic determinism in society. It is an entirely different thing to advocate that government be founded upon the theory.

James Madison, "Father of the Constitution," and our fourth President, said in the *Federalist*:

The most common and durable source of factions has been the various and unequal distribution of property. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations and divide them into different classes, actuated by different sentiments and views. The regulation of these various interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of government.

It might almost be said that he foresaw the necessity of industrial courts.

The great Madison well realized, and even prophesied, the perils of controversies that were bound to involve this nation in connection with its economic development, and yet he did not dream of making economic factors the motive power and be-all of government.

Economic factors are centrifugal and interrepellent, as he indicates, whereas government in a successful democracy requires the common denominator of political citizenship—a thing which all may have regardless of occupation. Political government is centripetal; it holds together. Economic government is disruptive. Economic determinism in government is an explosive force, especially in a society

wherein various interests are highly specialized, for it tends to split up the people into unsympathetic, warring, selfish groups, rather than to draw them together by the cement of political government—the common denominator of organized social effort.

Nikolai Lenin exemplified this in a conversation with Raymond Robins, when he said:

Your government is corrupt in that it is decayed in thought. It is living in the political thought of a bygone political age. It is not living in the present economic age. Take your states of New York and Pennsylvania. New York is the center of your banking system. Pennsylvania is the center of your steel industry. Those are two of your most important things—banking and steel. They form the base of your life. They make you what you are. Now if you really believe in your banking system, and respect it, why don't you send Mr. Morgan to your United States Senate? And if you really believe in your steel industry in its present organization, why don't you send Mr. Schwab to your United States Senate? . . . It is inefficient. It is insincere. You refuse to recognize the fact that the real control is no longer *political*. That is why I say that your system is lacking in integrity. That is why our system is superior to yours. That is why it will destroy yours.

That is the challenge of Lenin and Leninism to all democratic government. If Lenin alone were the challenger—if the motley crew of Haywood, Debs, Trotzky, Zinovieff, and their followers, were the only challengers—we might view the situation with a degree of equanimity. But Lenin is only a symptom of a larger and more disquieting tendency—the tendency toward economic control of government that must be eliminated if our democracy is to live and justify the faith of the fathers.

Lenin continued in his conversation with Robins, showing how his system will work:

Who will be our representatives in our national legislature, in our national Soviet, from the district of Baku, for instance? The district of Baku is an oil country. Oil makes Baku. Oil rules Baku. Our representatives from Baku will be elected by the oil industry. . . . Similarly, we will represent the Donetz coal basin as coal. The representatives from the Donetz basin will be representatives of the coal industry.

And so on, and so on. There would be no cohesive element in government—only the selfish struggle of selfish groups striving to gain their own selfish ends, each naturally pitted against the others.

In the chapter on the reaction against radical leadership I have quoted Edmund Burke in an admirable observation. He sets forth the fundamental objection to a congress made up of men who represent the special interest of classes instead of the interests of the people as a whole.

Perhaps the Lenin fallacy could be stated in this way: There is a wide and vital difference between life and government—in fact, almost as wide a difference as there is between man and beast.

Professor Seligman states the principle of economic determinism thus:

The existence of man depends upon his ability to sustain himself; the economic life is therefore the fundamental condition of all life.

Notice that the last word is “life”—not “government.”

The beast sustains himself by his own efforts. Government in the human sense for the beast is non-existent. His only concern is to obtain the necessities of existence.

With man it is different. He has the spiritual outlook and the interest in the æsthetic considerations which compel him to adopt a different attitude from that of the beast. This attitude, expressed in terms of patriotism, religion, art, music, literature, recreation, science, philosophy, and a hundred other activities, has created a profound gulf between man and beast. They have turned the eyes of man toward the stars in the hope of immortality. They have given him a motive in government and social adjustments that infinitely transcends the material, even though it may necessarily and properly include the material.

The tendency of men to form associations for mutual improvement gives the principle of economic determinism a different interpretation from that of merely setting up a machine for supplying animal wants. In discussing the divergence of human and bestial impulses, J. Allen Smith says:

In the lower world the life-sustaining activities are individual. Division of labor is either entirely absent or plays a part so unimportant that we may, for purposes of comparison, assume its absence. The individual animal has free access to surrounding nature, unrestrained by social institutions or private property in the environment.

But when we come to human society this is not necessarily true. The material environment is no longer the common pos-

session of the group. It has become private property and has passed under the control of individuals in whose interests the laws and customs of every community, ancient and modern, have been largely molded. Wherever the few acquire a monopoly of political power, it always tends to develop into a monopoly of the means and agents of production.

Now who shall have this political power—the few or the many? And how shall they achieve and hold this power?

Although individual control of property has come, the purely anarchistic and bestial struggle for existence gives way to the human impulses of co-operation and the establishment of laws and customs. This is the way humanity has of preserving itself. This is the recompense of civilization. Man forfeits his anarchistic freedom, and in return he receives the benefits of co-operation. Co-operation between labor and capital is necessary to society. The industrial conflict as it now exists is a cave-man weapon. A better means of adjustment is imperatively required.

The very fact that anarchy is abandoned in the association of men is an argument against allowing economic determinism to become a preponderant factor in government, for economic determinism in its essence is merely a statement of raw selfishness, and as we recede from anarchy we increase co-operation—spiritual and not enforced. We also tend to increase organization. Individual selfishness—anarchistic selfishness—is bad enough, but highly organized or civilized selfishness is a hundredfold

worse. It holds the possibilities of a cataclysm to a nation.

Making economic determinism or economic pressure a dominant principle in government means giving the power of life and death over society to those who happen to have the instruments of production in their organized power. The sophistry of the formula may be demonstrated by the simple test of trying to state just who are workers and who are not.

Individualism and organization have different shades of meaning. Each has its disadvantages when carried to the extreme or used for illegitimate purposes. The great task of civilization and real brotherhood is to maintain the proper balance between the two and let one be the check upon the other. The Industrial Court is designed to preserve the check and balance.

A great many who talk about "freedom" are employing a fallacy in this respect: The power of organization must not be used as an individual prerogative if justice is to be served. Liberty is only a relative term. A man exercising his "right to strike" is not exercising an individual right or liberty, but a collective weapon. Such a weapon would be powerless without the force of organization. Co-operation is a sacred principle which should not be prostituted to selfish ends. This holds good with labor and capital alike.

Democracy under civilization is a progressive

thing. It must adapt itself to changing circumstances. In changing, however, it should cling to fundamentals. There is great danger that it may drift into autocratic government unknowingly. To illustrate the need for vigilance we quote again from J. Allen Smith:

Individualism as an economic doctrine was advocated in the eighteenth century by those who believed in a large measure of freedom for the industrial classes. The small business which was then the rule meant the wide diffusion of economic power. A *laissez-faire* policy would have furthered the interests of that large body of small, independent producers who had but little representation in, and but little influence upon, the government. It would have contributed materially to the progress of the democratic movement by enlarging the sphere of industrial freedom for all independent producers. It does not follow, however, that this doctrine, which served a useful purpose in connection with the eighteenth century movement to limit the power of the ruling class, is sound, in view of the political and economic conditions which exist to-day. The so-called industrial revolution has accomplished sweeping and far-reaching changes in economic organization. It has resulted in a transfer of industrial power from the many to the few, who now exercise in all matters relating to production an authority as absolute and irresistible as that which the ruling class exercised in the middle of the eighteenth century over the state itself. The simple decentralized and more democratic system of production which formerly prevailed has thus been supplanted by a highly centralized and thus oligarchic form of industrial organization. At the same time, political developments have been strongly in the direction of democracy.

As a result of these political and economic changes the policy of government regulation of industry is likely to be regarded by the masses with increasing favor. A society organized as a political democracy cannot be expected to tolerate an industrial aristocracy.

This statement seems to be directed against capital, but by analyzing the essentials of economic control it may be seen that the statement applies with equal force to radical labor leadership. Economic autocracy is just as bad under one banner as another.

The syndicalist says that government should be a function of supplying food, clothing, shelter, and the other creature comforts to society.

He says that the principle of majority rule through the ballot box is "miseducation." He admittedly and frankly advocates government by economic pressure, though the pressure comes from a minority. He says that the ability to produce and control the necessities of life is the sole test of the right to govern —reserving, of course, his own definition of the producer.

He ridicules the political form of government, and asserts that our American talk of spiritual and moral ideals and patriotism is "bunk." He says those things have nothing to do with scientific government.

Reduced to its fundamentals, therefore, the question is whether we shall preserve the idealistic American form of government with its numerical majority rule and its respect for universal public welfare, or bow down to materialistic economic forces of capital or labor.

In his book, *The New Freedom*, Woodrow Wilson says:

We stand in the presence of a revolution . . . whereby America will insist upon recovering in practice those ideals which she has

always professed, upon securing a government devoted to the general interest and not to special interests.

The laws of this country have not kept up with the change of economic circumstances in this country. . . . Our laws are still meant for business done by individuals; they have not been satisfactorily adjusted to business done by great combinations, and we have got to adjust them. . . . The government, which was designed for the people, has got into the hands of bosses and their employers—the special interests. An invisible empire has been set up above the forms of democracy. . . . The government of our country cannot be lodged in any special classes. No group of men less than a majority has a right to tell me how I have got to live in America.

It is clear from the context that when Mr. Wilson wrote this he had the special interests of capital in mind, but such a thesis as that would lack integrity and conviction if it did not apply equally to any other group that might obtain economic power.

Such sayings, when applied to the program of Jouhaux, Woodruff, Lenin, and other syndicalistic radicals, show that their program is reactionary and destructive of true democracy.

There has been too much loose talk of “revolution.” It does not have a pleasant sound here, in America, where ample machinery has been provided for the adjustment of every known and conceivable social ill, leaving no necessity for resorting to anything but orderly and evolutionary processes. We have the right to vote. If the people do not get what the majority of them want it is their own fault—they have been derelict in their citizenship. They have

the power to bring about any change the majority desires without resort to "revolution."

What is the "industrial revolution" we hear about?

There is no occasion for anything but industrial evolution. There is need for that.

Industrial evolution means the administration of a larger measure of industrial justice by means of constitutional methods, at the hands of the lawmaking power, which is the instrument of the majority.

In his admirable work on *Democracy in America*, the great Frenchman De Tocqueville wrote, more than sixty years ago:

It would seem that if despotism were to be established amongst the democratic nations of our days, it might assume a different character; it would be more extensive and more mild; it would degrade men without tormenting them.

He also says of the manufacturing aristocracy:

The friends of democracy should keep their eyes anxiously fixed in this direction, for if ever a permanent inequality of conditions and aristocracy again penetrate into the world, it may be predicted that this is the channel by which they will enter.

This prophetic statement assumes that despotism may creep into American life in a very real sense without outward conquest, in some such manner as that pictured by Jouhaux, or other "borers from within"—whether from one extreme of industrialism or the other. This "industrial revolution" is a vague and elusive thing, but there is always more than a chance that it may become successful in some indirect way and in a way that will be disastrous un-

less wise and constructive methods are used to establish industrial justice.

It is difficult to get the American people excited over the possibility of Lenin or Haywood having his own way, but it is not so difficult to show them that some of the facts of direct action are already here at work.

It is not difficult to show them that laws have been enacted here in free America under economic pressure. It is not difficult to show them that their supplies of food and fuel are cut off or cornered by selfish interests, and thereby their American privileges and rights are being grievously infringed upon. It is not difficult to show them that the government established for the purpose of guaranteeing their lives, liberty, and pursuit of happiness is not always able to fulfill its guaranty because of the fact that an invisible government consisting of a small and despotic minority has laid a hand upon the means of production and transportation.

Now and then we see intimations of "the new society within the shell of the old."

De Tocqueville says:

The very essence of democratic government consists in the absolute sovereignty of the majority.

This is such an obvious truth that we seem to have become benumbed by its repeated impacts, and sometimes we lose the power to react when a minority rule comes up in a new guise. We now have the economic minority to reckon with.

"The immediate aim of democracy is political,"

says J. Allen Smith. "It seeks to overthrow every form of class rule and bring about such changes in existing government as will make the will of the people supreme."

He recognizes the fact that the commonplaces of to-day may become the perils of to-morrow. An activity of little or no consequence in 1835 might threaten the very foundations of republican government to-day.

Among the many prophetic warnings against present industrial crises is that of George Washington, who said in his Farewell Address:

All obstructions to the execution of the laws, all combinations and associations under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle [of constitutional government] and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force—to put in the place of the delegated will of the nation the will of a party—often a small but artful and enterprising minority of the community—and according to the alternate triumphs of different parties to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common councils and modified by mutual interests. However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government, destroying afterward the very engines which have lifted them to unjust dominion.

So many who desire to overthrow the Constitu-

tion appeal to that same Constitution to protect them from the righteous anger of good citizens and prosecution by state authorities.

Economic government has no place in American destiny. Whatever he may concede as to the validity of the theory of economic determinism as an existing fact, every lover of America must repudiate it as a controlling principle in government. It implies the rule of a bold and brazen minority. The fact that the minority may be of a group arbitrarily designated as the "proletariat," does not alter the fact that it is a minority. As a matter of fact, no one was ever able to draw the line between workers and nonworkers, except in a most crude and unscientific way. The brain factor has become too important in modern industry. Five minutes' thought by one man may equal the thoughtless labor of a thousand men for a thousand days. Who can weigh the comparative value of work to society?

Human rights outweigh every conceivable economic right or claim. With all due regard to production, it cannot be the measure of citizenship or social value. Control of production may take the place of production itself—in a thousand different ways—by money, by leadership personality, by invention, by geographical position, or other fortuitous tactical advantage. Who can measure the productive value of Abraham Lincoln, Jenny Lind, Edison, Betsy Ross, Patrick Henry, Samuel Gompers, Doctor Mayo, Julia Ward Howe, Clara Barton? Who

is there so wise that he can establish a scheme whereby each member of society is rewarded according to his material contribution to society, even if we except the spiritual? Or, on the other hand, who will say that the indolent or shiftless man deserves equal consideration with the strenuous toiler?

American citizenship was built up in the sturdy individual struggle with frontier conditions, and the conquering of unfavorable obstacles. It was built up under the idealistic guidance of such men as Washington, Jefferson, Franklin, Marshall, Lincoln, Roosevelt, and other stanch believers in organized civil government and majority rule. It cannot depart from the guidance of such men in the fundamentals without sacrificing its very identity and life.

"A society organized as a political democracy cannot tolerate an industrial aristocracy." The thoughtful citizen, studying the signs of the present time, cannot fail to see increasing evidences of industrial aristocracies and economic autocracies merging together so as to form a common enemy to our historical form of democracy. Our governmental organism must contain some strong agency to preserve itself against the invisible empire of artful minorities equipped with the leverage of organized economic power. That strong agency is most naturally expressed in terms of industrial courts of some kind. As long as men are imperfect and selfish we must have such an agency as the final line of defense for the political democracy.

## XII

### WHY RADICALS OPPOSE

**T**HREE is no mystery about the violent opposition of radical labor leaders to the Industrial Court. The typical radical attitude is stated in the preamble of the I. W. W. constitution, an excerpt of which is:

The working class and the employing class have nothing in common. . . . Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production, and abolish the wage system. . . . It is the historic mission of the working class to do away with capitalism.

The Industrial Court, as a matter of course, presupposes the American principle of property rights, while interposing itself in behalf of human rights. The radical would solve the question by doing away with property rights altogether.

As labor leadership approximates radicalism, it distrusts and opposes the Industrial Court, for the court takes away from the agitator and the exploiting union boss the power that has been his.

Not all the opposition to the court can be classed as I. W. W. or Bolshevik, but in general it can be

said that the labor extremist is traditionally at swords' points with the employer, and he conceives it to be his historic duty to keep himself and his followers in a perpetual state of antagonism, as though nothing could be obtained in the way of justice except by the use of strikes and other methods of coercion.

W. Z. Foster, in his book on the steel strike, takes this position, virtually espousing the I. W. W. theory that there can be no peace between capital and labor as long as the wage system exists. He not only claims this philosophy for himself, but attributes it to all trade-unions. He exaggerates the situation, of course, but his statement holds a warning to those who think that sounding phrases about collective bargaining and the "right to strike" will bring about any measure of industrial peace.

The radical leader, whether he calls himself a syndicalist or a Republican or a Democrat, has a traditional attitude of belligerency toward employing capital which he thinks he must keep at high tide. He instinctively realizes that as soon as he is deprived of the attitude of protectorship over labor his days are numbered. He must be the instrument through which concessions are secured and protests voiced. Any court or body that makes him unnecessary is to be opposed as though it were a menace to labor, of course.

Mr. Gompers, pleading for his "stub of a sword," and eloquently portraying the pose of a labor leader

in the closing of his address in Carnegie Hall, May 28, 1920, gave a fine exemplification of the old conception of labor-leader policy. He appeared as a knight of the old order—the old order in which force rules and the gathered clans, bound by union ties, appoint a champion to do battle for them, unable or unwilling to realize that a just and benevolent government may provide a substitute for the stub of a sword.

He breathed defiance. He had no suggestion for the safeguarding of the public. As a successor for war he advocated more war.

The only hope, and the logical purpose of the radical, lies in the direction of convincing labor that its salvation lies in the abolition of employing capital. When radicals find the door closed to this exotic and un-American doctrine, they will cease their activities, but not before. "Industrial peace? Certainly not! Why do we want peace? We want war until capital is abolished." That is the attitude of the radicals. They thrive on discontent and disturbance. Any law that alleviates industrial conflict is distasteful to them. The radical Socialists hated Theodore Roosevelt above all the rest because Roosevelt was continually undermining their imposing edifice of discontent by advocating measures of industrial peace and justice.

State supervision through courts and adequate commissions is the republican preventive for Socialistic state ownership. The Socialists would have the

state operate and own a vital industry. The republican would forestall this by giving the state enough supervision to restrain private greed.

The government acts better as a judge and conciliator than as a business administrator, except in emergencies. Under a temporary stress a government may do unusually well. Government ownership eventually tends to throw the operation of vital industries into the hands of politicians. Courts are the most impervious to politics of any of our public institutions. Private initiative, held in due check by the courts when moral conscience fails, is the most wholesome expression of American industrial life. If the Industrial Court makes good, Socialism will have sustained its most staggering defeat.

It has been well said that co-ordination is the key to the successful operation of any large enterprise.

The warden of a Western penitentiary once said that he used degenerates to tear down old stone buildings, but normal-minded prisoners to perform work of construction. One degenerate, he said, could tear down faster than three normal men, but was unable to lay five stones in a straight row.

The test of normality and human efficiency is the ability to co-ordinate.

Labor and capital are not properly co-ordinating—anybody will concede that. It should be the aim of statesmen to cause labor and capital to co-ordinate.

The radical leader does not want co-ordination.

He wants destruction of one of the two discordant elements. He desires to keep up the feeling of antagonism. He wants to keep up the so-called right to strike. He wants to keep up a condition which continually holds the strike as a menace in the background. He wants to keep alive the feeling of abnormality and suspicion. Most of all, he wants to keep his job.

The Industrial Court comes forward with a plea for normality and co-ordination. It offers a workable substitute for strikes. It seeks to do away with the radical sword and the stub of a sword.

Mr. Gompers and many of his coworkers are opposed to many of the profit-sharing plans and industrial democracy systems in operation in some great establishments, even though such systems have proven to be blessings to the rank and file of laboring men.

It is not difficult to understand their opposition. If the laboring man can get justice and fair play by some other means than by the resort to strikes and the show of force, it means that the radical leaders are out of a job. It does not mean that unions can be less strong or effective, however. Organization can be for other valuable and necessary purposes besides war.

An instance of reaction against radicalism is found in the open-shop movement, which has gained great impetus recently. The open-shop movement is the answer to extreme labor leadership. Such unfor-

tunate clashes of opinion and policy could be avoided by resort to a tribunal of justice and fair play.

One of the things which legislation should guard against, and which the Kansas legislature, in establishing the Industrial Court, kept sedulously in mind, is the dangerous possibility of allowing the present reaction of public sentiment against radical labor leadership to interfere with a program of impartial justice.

Despite the fact that radical leadership now seems to be securely in the saddle, all who are acquainted with the situation realize that the conservative in labor ranks will eventually mark the direction.

The average worker, when he has an opportunity to follow wise leadership, is not a Bolshevik. He wants to be proud of his work. He desires a larger share of the satisfaction which should come with doing well his daily job. He wants that more than he wants a larger share of the management and control of the enterprise which furnishes the job. His normal ambition is to stand upon the foundation of his own merit, to be a good workman, to be worthy of his earnings, and to have those earnings sufficient to bring contentment to himself and his family.

The radical has disturbed his visions somewhat. He has distracted his attention and filled him with the noise of sham battle; but normally, the American workman wants his job to be the pathway to his idea of success.

The hope of the Kansas law is in the fact that it

is gaining ground with this normal workman who, for reason that we have no better classification, is called a conservative. He is already conscious of the fact that too much unionization may become as ineffective as too little. No organization is so powerful that it can with impunity use power immoderately. Employing capital was brought to the realization of this lesson, and there are in the ranks of labor enough thoughtful men to realize that the immoderate program of the radical labor leadership is going to result just as disastrously as the immoderate program of capital has resulted.

The sentiment which to-day is culminating in a definite reaction against organized labor had its first recognizable manifestation following the passage of the Adamson law. This incident dramatized the power of a solid minority in control of a public necessity to supersede government. When the representatives of the four American brotherhoods, mad with temporary power, held their stop watches while Congress and the President adopted the Adamson law through coercion, the seed was sown in the public mind for a revolt.

At the moment, interest in the matter seemed to disappear in the emergencies of the war almost immediately after the campaign in which President Wilson was re-elected. But now men hark back to it as the beginning in America of the radical leadership's use of class power.

Men are reading again the words of President Wil-

son, uttered in somewhat feeble protest against his own action in surrendering to labor's demand. Said he, in extenuation:

Matters have come to a sudden crisis in this particular dispute and the country has been caught unprovided with any practical means of enforcing the principle of arbitration, by whose fault we will not stop to inquire. A situation had to be met whose elements and fixed conditions were indisputable. The practical and patriotic course to pursue, it seemed to me, was to secure immediate peace by acceding the one thing in the demands of the men which would bring peace.

After pointing out the emergencies of the situation along the Mexican border, where almost our entire military force was then stationed to guard against hostile raids, and the need that this force be supplied steadily with the transportation facilities then threatened by the perils of the strike, the President referred likewise to the unprotected position of the general public and then suggested the remedy which is exactly in line with what we have accomplished in Kansas. He said:

There is one thing we should do if we are true champions of arbitration. We should make all awards and judgments by record of a court of law, in order that their interpretation and enforcement might lay, not with one of the parties in arbitration, but with an impartial and authoritative tribunal. These things I urge upon you, not in haste or merely as a means of meeting the present emergency, but as permanent and necessary additions to the laws of the land suggested by circumstances we hope never to see, but imperative as well as just if such emergencies are to be met in the future. I feel that no extended argument is needed to commit them to your favorable judgment.

The President, as he looked back over a course of action which had made the nation subservient to the class, suggested the only remedy possible if we are, as he intimates, to meet this emergency in the future.

Laws are not made merely by writing words in a statute book. There must be behind them intelligent public sentiment capable of coherent action. This sentiment must be born of a calm and dispassionate analysis. Out of the display of radicalism that America has seen in the recent past, and out of the reaction against that radicalism, there must be brought a sane realization of our duty in the line of legislation. The I. W. W. philosophy should be studied so that we may know its fallacies, and we must understand whence come the currents of unrest and disturbance that have disturbed our national life. Blind reaction will only insure the triumph of radicalism. The next decade will be a retesting of our American government.

## XIII

### STRIKES AND LOCKOUTS

**T**HE strike, according to Webster, is “the act of quitting work; specifically, an act of a body of workmen, done as a means of enforcing compliance with demands.”

The beginning of the strike was such a perfectly proper and natural thing that a great many people are unable to see that the strike can have any inherent element of wrong.

The strike arose from the simple proposition of refusing to sell one's service at less than a certain price.

When a man quits work and announces he cannot or will not work at the old wage, and must have a higher one, he is acting within his normal rights just the same as a man is acting within his normal rights when he refuses to sell or lease his house under a certain figure. As a simple, rudimentary proposition, then, the individual worker's position is impregnable. It is the undisputed right of the individual to quit work at any time he chooses, and insist upon higher wages before going back.

If there were nothing else to the strike problem

than that, there would be no strike problem at all and people might well ignore the whole subject. Unfortunately, the whole subject takes on a much different color in the light of altered circumstances.

When a man organizes a syndicate and buys or controls by means of options the sale or rentals of all the houses of a certain popular class in a city, and raises the sale or rental price to certain figures, we might concede that he was acting within his rights. But we would begin to get restive. We would feel that he was rather taking advantage of the situation, especially if there were a housing shortage. Houses are used for comparison because they are impressed with a certain vital and almost sacred significance.

And then suppose that this man should form a syndicate that controlled all the houses in the city, acquiring a power to control the terms of shelter—what then? We would consider that an outrage and would implore the lawmakers to “do something.”

And then suppose again that this man, or a group of men, should form a syndicate of syndicates and control not only the houses of the state but the supply of coal and food and clothing, and would double, triple, and quadruple the prices—what then? We would feel that the very lives of the people were being threatened, and we would demand in no uncertain tones that the government interfere, else the very government itself would be superseded by a private organization of capitalists.

The man or group might say, "Well, the property is ours; we can do as we please with it."

That may be true in the individual case, but it certainly is not true in the collective case. There is as much difference as there is between night and day. The right of the people is superior to the right of organization. The necessities of life are impressed with a public interest. Socialists would put a stop to all this by having the government take over and own the utilities. But there is a better way.

The government has passed laws regulating combinations. It has exercised its proper police powers in restricting property rights so that they do not become property despoticisms. The courts are given the power to prevent men from using their capital in such ways as to operate against public welfare.

The individual who quits work is exercising a perfect right as long as he confines himself to quitting work. But if he goes farther and agrees with others to quit work, his act takes on a more and more complex and serious aspect, depending upon the scope of his organization and its purposes. If his organized agreement goes so far as to control and restrict the product of one of the great utilities, the lives of the people may be threatened. If his organized agreement goes so far as to control and restrict the product of all the great utilities, government itself is threatened with coercion or extinction, for if a government is unable to guarantee the lives and health and

security of its people against organized force, it is, to all intents and purposes, a failure. That much is self-evident.

The right to quit work is entirely different from the right to strike, as any fair-minded person must concede. Even if the Kansas law were primarily an antistrike law, which is not the case, it would still be extremely untruthful to say that the law would deprive a man of the right to quit work.

Striking, in the meaning universally accepted by all—organized labor included—carries with it the very necessary and important implication of resuming work after demands are granted. Striking, therefore, is not abandoning the job. On the other hand, it implies the opposite idea—a rather marked desire to keep the job so as to get higher wages or other desiderata. The fisherman does not jerk the fly past the trout because he is trying to get the fly away from the trout. The striking workingman does not strike because he is going to quit work.

There is no reason why legislation could not be enacted, if desired, that would sharply differentiate between striking and the mere quitting of work. A law against abandoning a job would be obviously in conflict with the Thirteenth Amendment. No one would be so stupid or shortsighted as to propose any such law. And for that matter, perhaps, there is no pressing need for any law to prevent striking, except where such striking threatens the lives or welfare of the public.

In considering the entire field it is necessary to make several clear distinctions. Review the history of the strike in its general outlines:

The right to abandon a job individually or collectively is unquestioned. It can never be abridged.

The right to quit work individually for the purpose of securing higher wages or better working conditions is unquestioned.

The right to agree with others to quit work for the purpose of demanding better wages or working conditions may be admitted, as long as the public welfare is not threatened.

The right to agree with a large body of others to quit work and to hinder or stop the production of essentials in time of need is subject to very serious question and calls for the intervention of government, because—

The right to agree with all other workers to quit work until any and all demands, economic or political, are met, regardless of the suffering or deaths of the population, is a thing that is always in the realm of possibility as a logical sequence, and in such a case the existing government would be in effect overthrown in favor of an economic oligarchy.

That illustrates the evolution of the strike from a legitimate and harmless function to one carrying the gravest menace to society and to civilization itself.

The I. W. W., known also as the One Big Union, have a much more ambitious conception of the strike

than the primitive idea of quitting work until certain demands concerning wages and living conditions are met. The One Big Union idea of a strike is that it is a revolutionary political measure, not merely because it holds possibilities of violence, but because the general strike is the contemplated final sweeping climax of a series of strikes, and the sole object of the general strike is to control all necessities and seize the government by direct action.

"We do not want a fair day's wage for a fair day's work," the One Big Union teachers say in their texts. "Such a thing is impossible. We propose to take possession of the land and machinery of production."

The One Big Union theory is the logical result of the growing strike program.

By growing strike program I mean the extension of the strike function beyond that of merely striking to demand better wages and working conditions. I mean the use of the strike to delay or stop production of a given commodity or to coerce governmental functions or officials.

In the late summer of 1920, during the Polish crisis, when there was some talk of American intervention, the Chicago Federation of Labor passed a resolution urging that the American labor bodies "prevent mobilization of military or naval forces" for any movement to help Poland.

Of course, any organization has the right to protest against a declaration of war or make itself felt

by petition or memorial to Congress in the constitutional method, but nothing was said about that form of protest in the resolution. The plain intent was to use the direct-action method—"prevent mobilization." Can any self-respecting democracy tolerate any such interference with the process of government? Isn't it about time that a halt were called on such tactics?

Eugene V. Debs, the Socialist leader, says: "A strike is a civil war. It may be bloodless, but it is war, nevertheless."

William Haywood, the I. W. W. chief, says, "Every strike is an incipient revolution."

Each of these men has a considerable following. The growth of direct action and syndicalism in Europe has encouraged these followings. Men of the W. Z. Foster type in the American Federation of Labor openly favor the radical conception.

In his presentation at Carnegie Hall, New York, May 28, 1920, Mr. Gompers failed to distinguish between the two functions of the strike. Inferentially, at least, he justified the use of the direct-action political strike when he commended the German workers for calling a strike to forestall Von Kapp's monarchistic designs, and denounced the Kansas law because it would prevent workers from calling a strike for political purposes.

The Kansas law certainly should prevent the calling of a strike for political purposes. In the United States we govern by the ballot—not by economic

force or coercion. There is no conceivable contingency that would justify the use of the strike to fore-stall or bring about a political change or a governmental policy. Direct action certainly has no place in American government.

This brings us to the crux of the Kansas law.

The Kansas law does not prevent a man from quitting work for any lawful reason, and the test of lawfulness is whether the intent is to restrict or stop production by conspiracy.

There are two functions to the strike—that is clear. One is the effort to gain better wages and working conditions. Deplored force as we do, we must admit that the lack of a better method has justified the use of the strike in this direction, and we propose a better method. The other function is that of restricting or stopping production of vital essentials and possibly of coercing government.

Analyzing the situation in connection with the Kansas law, then, we find that the *intent* of a strike is the pivotal point to the controversy.

The problem, then, is to decide the intent of the strike.

W. M. Geldart, Vinerian professor of English law at Oxford, and one of the recognized legal authorities of the world, says:

The consequences of an act may be said to be intended when the person acting contemplates that they will necessarily or probably follow from it, whether that consequence be desired for its own sake or not. It is said that a man is presumed to

intend the probable consequences of his acts, but failure to anticipate probable consequences is really negligence rather than intention, and if the saying is more than a rule of evidence for ascertaining intention, it only means that for some purposes negligence, no less than intention, creates liability.

This is a rather sweeping interpretation of intent, but it doubtless has enough sanction in jurisprudence to show that courts are amply justified in judging an act by its intent and in holding persons strictly accountable for potentially harmful acts.

Frank P. Walsh, in his address before the Kansas legislature on the Industrial Court bill, set forth the plausible argument that the intent of quitting work was impossible to determine, because the withdrawal even of a single person's labor cut down production just that much, and that the reduction of output was such a self-evident result of withdrawal of labor that it would be impossible to draw the line. His argument is well answered by F. Dumont Smith, quoted in Chapter XI, who shows that the state is concerned, and may use its police power, only when the withdrawal of labor reaches the proportions of a menace to public health and life. When the strike carries with it the probable result of endangering the public health it automatically falls under the prohibitory feature of the Industrial Court law.

Again it might be contended that a number of men could quietly and in orderly manner *agree* to quit work, even in an essential industry where the

safety of the public is involved, and not be in a conspiracy. Blackstone, in 1765, wrote:

A conspiracy is a combination by two or more men, persons, or companies, to bring about either an unlawful result by means lawful or unlawful, or a lawful result by unlawful means.

One may decide not to trade at Jones's store. That would be entirely and unquestionably lawful. If he conspires with a thousand others to refuse to trade at Jones's store, he produces an act which is usually held unlawful.

A man may withdraw his money from a bank. This is not only lawful, but necessary in the course of business. If he conspires with a thousand others to withdraw money from the bank at the same time, he does an unlawful act.

Anglo-Saxon law is replete with the manly instinct of fair play, and this instinct is found in the principle that the fact of combining is a more serious offense than the contemplated result of the combination. The damage of the intrinsic act might be moderate, but the fact that conspiracy was resorted to is considered an offense indicating malice and a desire to take an unfair advantage.

Prof. Frederic Jesup Stimson of Harvard approaches the principle of the Kansas law when he says:

A conspiracy is not only a guilty combination of two or more persons for an unlawful end by any means, or for a lawful end by unlawful means, but also for an immoral end, a malicious

end, let us say, the ruin of a third person, or the injury of the public.

He says further that “the thing that is criminal is the combining.” Again he says of conspiracies:

The American courts have been curiously obscure or vacillating on this point. . . . It is only of late, when the matter has come up before the Federal Supreme Court, that the courts of a few states which have been educated by frequent recurrence of disputes of this sort, that we begin again to see the principle clearly, as I shall venture to lay it down here: that the acts of a number of persons combined are to be judged by their *intent*. In individual acts the intent is of no importance except as it turns an accident into a crime; chance medley, for instance, into murder, or mere asportation into larcency, or ordinary conversation into slander; yet these few instances serve to show how universal is the recognition of intent in the law and how little difficulty it presents. Juries have very rarely any difficulty in determining this question of intent in individual acts, and in like manner they will have no difficulty when it is recognized as the fundamental test in cases of combination—*i.e.*, conspiracy.

In labor combinations, is the first object to get better terms for the persons combining, an increase in wages or a reduction of hours, improved conditions in factories and shops, etc., etc., or is the first thing they are seeking to do to injure a third person, not concerned in the dispute, or to control the liberty and constitutional right of the employer himself? If the latter, it is “oppression” within the meaning of the early common law, and should be so held to-day. And what shall we say of the striker who tries to prevent another man from working? Is he not attempting to control that man’s liberty? Is he not infringing upon his constitutional rights?

In his book, *Business and Government*, Dr. Jeremiah W. Jenks differentiates between quitting work and one phase of striking, as follows:

The right of any man, or of all men, to quit work cannot be taken away. Very likely the right to strike can: that depends upon what is done after the quitting. It is most unfortunate that the judges, clear-headed as they usually are, have not always made these distinctions plain, but often have confused the mere quitting of work with one or more activities, picketing, boycotting, or what not. The legality of the strike, as also its morality, depends upon the character of the measures by which it is supported.

It is very evident, in reading the great mass of legal and economic authority in this connection, that the Kansas law is very moderate in its restrictive power, for legal precedents would permit it to go much farther. It is evident that contemporary discussions, so far as they have come under our notice—if we except the syndicalist literature—have not contemplated the possibility of the strike infringing upon the preserves of government. That is to say, they lay stress on the damage done to the employer or some third party without going so far as to consider the possible effect should the strike be used as a manifestation of economic control.

The discussion of the strike as a political or direct-action government weapon is confined almost wholly to the works on syndicalism, and these, perhaps, are not familiar to the general public. More is the pity, for there is enough ingenuity and plausibility to their propaganda to warrant more than passing notice. The intellectual achievements of the philosophical syndicalists are not to be scorned. People should be ready to meet their arguments.

Summing up, then, we see that the strike has come to mean vastly more than merely quitting work. It has a broad and sweeping potentiality that goes far beyond the ordinary free acts of the individual. The American people must adjust their minds to new conceptions of the strike. Those conceptions are not new in Europe. They have been the resort of French railroad workers and the English miners for some time. Direct action by general strikes is not an idle dream in the Old World, but an accomplished fact, not only in Russia and Germany, but in more democratic countries. Care must be taken that this country does not repeat the mistakes of Europe. American free government by the majority will of the people must be kept undefiled.

Again I wish to emphasize the fact that I do not believe a large proportion of American labor favors the syndicalist kind of strike, but no one can deny that the leadership has become infected with the idea. It is the natural result of the lust for power. That power, when achieved, has become a temptation tending toward bolder exploits.

The principle of lockouts is exactly the same as that of strikes, and it is exactly the same as capitalistic combinations in general. The individual may close up his small shop for his own private reasons and no one dare question his act. But if he employs a large number of men and his lockout means restriction or shortage of production or exploitation of labor, he must answer to the general public as well

as to labor. His business is impressed with the public interest. The bigger the lockout in vital industries the worse the crime against humanity. Again the intent becomes the all-important factor, and if there is conspiracy among employers the moral crime is intensified.

Society has come to the stage where it can and must assert its paramountcy to industrial interests. Simple majority government must be supreme.

## XIV

### THE FRUIT OF THE KANSAS COAL STRIKE

THE Court of Industrial Relations is the direct result of public sentiment aroused by the Kansas coal strike. While the state was still operating the mines a special session of the legislature was called for the purpose of enacting some law which would make impossible in the future the recurrence in Kansas of a thing as wasteful and dangerous as a shutdown in an essential industry.

It was the consensus of opinion among the leaders of the legislature that compulsory arbitration offered no real remedy, and that we must find a better basis than that which rests upon the selfish interests of the parties involved in a wage controversy.

A study was made of the industrial courts of Australia, which are based upon arbitration, and of the somewhat better results obtained in Canada, but it was decided that neither of these systems adequately met the situation. Therefore the principle of arbitration was discarded and the principle of adjudication adopted.

We Americans are under a form of law and government inspired by Anglo-Saxon traditions. English

is the language of our schools, our courts, our literature, and our laws. The ideals we hold are Anglo-Saxon ideals. The common law of England, as it was brought to these shores by Capt. John Smith and his friends in 1607, is the foundation upon which our legal system is builded in every state of the American Union, with the single exception of Louisiana.

It has been said by eminent American jurists that:

The common law grew *with* society, not *ahead* of it. As society became more complex, and new demands were made upon the law by reason of new circumstances, the courts, originally in England, out of the storehouse of reason and good sense, declared the "common law." But since courts have had an existence in America they have never hesitated to take upon themselves the responsibility of saying what is the common law;

that:

The flexibility of the common law consists not in the change of great and essential principles, but in the application of old principles to new cases, and in the modification of the rules flowing from them, to such cases as may arise; so as to preserve the reason of the rule and the spirit of the law;

that:

The inexhaustible and ever-changing complications of human affairs are constantly presenting new questions and new conditions which the law must provide for as they arise; and the law has expansive and adaptive force enough to respond to the demands thus made of it, not by subverting, but by forming new combinations and making new applications out of its already established principles.

Thus the law in all Anglo-Saxon countries springs from the needs of the people and keeps pace with the developments of civilization. Every permanent ad-

dition to the law of the land takes root in public necessity, and grows from such necessity as a tree grows from the soil.

Under the common law, since very ancient times, certain industries and vocations have been regarded as impressed or affected with a public interest. The inn, the blacksmith shop, the grist mill, are familiar examples. Two hundred and fifty years ago a noted English jurist, Sir Mathew Hale, stated the principle of public interest in language which has been frequently quoted by writers on law and by courts. Sir Mathew said, in substance, that if the king himself be the owner of a public wharf which all must use who come to that port to unload their goods, then the charges which the owner may make for the use of his wharf and other loading facilities must not be exorbitant, but must be reasonable and fair, because the wharf is now impressed with a public interest and is no longer a matter of private right only. This is the principle of public interest as accepted in all the English-speaking countries. In the United States the government regulates that class of industries known as "public utilities" in the interest of the general welfare.

However, under the American system, the legislative body is often called upon to declare and extend the law to new conditions. The legislature of my state, in attempting to find a solution for industrial problems, adhered strictly to the established principles of the common law. In enacting our industrial

code we have not attempted to destroy, nor to alter, nor to remove any of the ancient landmarks of the law. We have founded this legislation upon the principle that certain industries and vocations are affected with a public interest. We have added to the long-accepted list of industries so affected those which directly and vitally influence the supply of food, clothing, and fuel. These three classes of industries, together with those which heretofore have been known as public utilities, are deemed "essential industries," and are by legislative action declared to be subject to regulation. If the railroads, telephone lines, electric plants, and other similar institutions are so affected with a public interest as to be subject to regulation by the state, surely the lawmaking body has authority to designate industries vitally influencing the quantity and quality of food, clothing, and fuel of the people as affected with a public interest. The legislature of my state, in this new industrial code, has attempted to do two new things only:

First, it has impressed with a public interest the manufacture of food and clothing and the production of fuel.

Second, it has declared labor, as well as capital, invested and engaged in these essential industries, to be impressed with a public interest, and to owe a public duty.

The other provisions of the law merely establish the procedure by which the Court of Industrial Relations functions in adjudicating controversies and in the regulation and supervision of the essential industries "for the purpose of preserving the public

peace, protecting the public health, preventing industrial strife, disorder, and waste, securing the regular and orderly conduct of the businesses directly affecting the living conditions of the people, and in the promotion of the general welfare."

To sum up, the legislation

First, provides that the operation of the great industries affecting food, clothing, fuel, and transportation is impressed with a public interest and subject to reasonable regulation by the state.

Second, creates a strong, dignified tribunal, vested with power, authority, and jurisdiction, to hear and determine all controversies which may arise and which threaten to hinder, delay, or suspend the operation of such industries.

Third, declares it to be the duty of all persons, firms, corporations, and associations of persons engaged in such industries, to operate the same with reasonable continuity in order that the people of this state may be supplied at all times with the necessities of life.

Fourth, provides that in case of controversy arising between employers and employees or between different groups or crafts of workers, which may threaten the continuity or efficiency of such industries and thus the production or transportation of the necessities of life, or which may produce an industrial strife or endanger the peaceful operation of such industries, it shall be the duty of said tribunal, on its own initiative or on the complaint of either party, or on the complaint of the attorney general, or on complaint of citizens, to investigate and determine the controversy and to make an order prescribing rules and regulations, hours of labor, working conditions, and a reasonable minimum wage, which shall thereafter be observed in the conduct of said industry until such time as the parties may agree.

Fifth, provides for the incorporation of unions or associations of workers, recognizing the right of collective bargaining and giving full faith and credit to any and all contracts made in pursuance of said right.

Sixth, provides for a speedy determination of the validity of any such order made by said tribunal in the supreme court of this state without the delay which so often hampers the administration of justice in ordinary cases.

Seventh, declares it unlawful for any person, firm, corporation, or association of persons to delay or suspend the production or transportation of the necessities of life, except upon application to and order of said tribunal.

Eighth, declares it unlawful for any person, firm, or corporation to discharge or discriminate against any employee because of the participation of such employee in any proceedings before said tribunal.

Ninth, makes it unlawful for any person, firm, or corporation engaged in said lines of industries to cease operations for the purpose of limiting production, to affect prices, or to avoid any of the provisions of this act, but also provides a means by which proper rules and regulations may be formulated by said tribunal providing for the operation of such industries as may be affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business.

Tenth, declares it unlawful for any person, firm, or corporation, or for any association of persons to violate any of the provisions of the act, or to conspire or confederate with others to violate any provisions of the act, or to intimidate any person, firm, or corporation engaged in such industries with the intent to hinder, delay, or suspend the operation of such industries, and thus to hinder, delay, or suspend the production or transportation of the necessities of life.

Eleventh, provides penalties by fine or imprisonment, or both, for persons, firms, or corporations or associations of persons willfully violating the provisions of this act.

Twelfth, makes provisions whereby any increase of wages granted to labor by said tribunal shall take effect as of the date of the beginning of the investigation.

By means of this legislation I believe we have established a program through which we will be able—

1. To make strikes, lockouts, boycotts, and blacklists in four essential industries unnecessary and impossible, by giving labor as well as capital an able and just tribunal in which to litigate all controversies.
2. To insure to the people of this state, at all times, an adequate supply of those products which are absolutely necessary to the sustaining of the life of civilized peoples.
3. To stabilize the production of these necessities to a great extent, by stabilizing the price to the producer as well as the consumer.
4. To insure to labor steadier employment, at a fairer wage, under better working conditions.
5. To prevent the colossal economic waste which always attends industrial disturbances.
6. To make the law respected, and discourage and ultimately abolish intimidation and violence as a means for the settlement of industrial disputes.

The position taken by the Kansas legislature is that the state has the same right to take jurisdiction over offenses committed against it in the name of industrial warfare that it has had in the creation of its other courts to take jurisdiction over other offenses.

We have simply reached the same determination in relation to industrial strife that has been reached in the evolution of society which brought to us the formation of the criminal and civil courts. We have established a third court to meet a need certainly as great as that which ever existed to call for the creation of our other courts.

The industrial war is the only private quarrel which the government has allowed to go unchecked. It has taken over all the others, from dueling to fist

fighting. There was a day when the only question any man asked concerning a fight was as to whether it had been a fair fight. There was a day when man thought there was no better mode of sanctifying property rights than the robber-baron method of philosophy—that he who had the might could take and keep.

To-day no man of reason would go back to the earlier methods, when men settled their personal and property rights through feudal strife.

The Kansas law does not abolish collective bargaining. It legalizes it, and the court is not supposed to interfere in any labor controversy until after the fullest opportunities for conciliation and arbitration have been exhausted, because we realize that the finest basis of industrial peace is that which is founded upon mutual understanding and mutual advantage; but when every honorable effort to reach an understanding has failed, the Kansas court steps in and presents its program as a substitute for the strike.

The Kansas court contemplates the use of all the elaborate plans for conciliation and arbitration set forth in the report of the second Industrial Conference; in fact, the Kansas program is the second Industrial Conference plus a court of last resort. The second Industrial Conference carries the thing up to a certain point, and failing, leaves the issue to public sentiment. The Kansas court takes the same course, and failing, settles the controversy in the

name of a just and impartial government. One leaves the issue to a public which has no power to enforce its determination. The other protects the public against the quarrel.

The most popular argument against the court on the part of the laboring man is that it forbids a man the right to quit work. The law expressly safeguards the individual against this invasion of his rights. It protects the man in his right to quit work and also in his right to continue on the job. It holds that the right to work is as sacred as the right to quit work, and the one must be as fully protected by the state as the other.

It forbids the union-labor official the privilege to order a man to quit work. It says that the man may quit any time he wishes or for any reason which influences him, but he shall not come around the next day with his pockets full of dynamite to prevent the man from working who wishes to continue upon the job. It forbids men the right to conspire to close down a factory which is engaged in the production of a human necessity.

In holding the Kansas Industrial Court law constitutional, Judge Curran of the Crawford County district court said:

I am not concerned with the wisdom of the legislature in passing this law. Whether the law is economically wise or unwise is not for the court to say. The one question to be considered by me is whether the law is in conflict with the Bill of Rights or Constitution of the United States or Kansas.

A great deal has been said of the divine right to strike, the

divine right to quit work. In stressing the "divine right to strike," the divine right to quit work, the right of the man to have employment so he can provide for his wife and children has been sadly overlooked. The divine right to strike, where it affects the health and welfare of the public, must be relegated to the realm where the divine right of kings has been sent.

A man cannot be compelled to work, you say. Certainly not. I do not believe for a moment that any member of the legislature intended to make any man work. The purpose of this act is in an orderly way to give a man a chance to work.

The chief objection of the operator is that the law seeks to regulate private business. It is clearly pointed out in answer to this that the law is an emergency measure. It is not a price-fixing law or a wage-fixing law, but a law for the protection of the public against the waste and economic pressure during an industrial controversy.

It is summoned only in the emergency, for the purpose of keeping a continuous operation of essential industries during wage controversies. When the controversy is over the court has completed its function. It takes the same position toward the operator that it takes toward the laborer—that he shall not conspire to close down his institution for the purpose of affecting either a wage controversy or the price of a commodity.

Judge Curran, in handing down his decision holding the law constitutional, also said:

This act does not begin to operate, does not begin to function, until there is a dispute and the parties to that dispute cannot settle it, and when they cannot settle it they address themselves to this court. Then and not till then does it begin to function.

It is urged that it interferes with the making of a contract. No. It does not do that. . . . The contending parties can agree upon any wage that is satisfactory to the worker and the employer. They still have that right. There is no pretense of taking that away and that cannot be taken away.

There is added, of course, to the power of the court in its industrial functioning, the power of a public utilities commission over public utilities.

In addition to the objection of the union-labor leader and the operator, there is also a class of academic men who talk in a timorous fashion about the sanctity of human rights. These men disregard altogether the fundamental fact that organized society has taken over most of our sanctities.

The law invades the sanctity of the home and tells the husband what his relations to his wife shall be, and what her relations shall be to him. It has taken over the most sanctified relation of the parent and the child. In our state it tells the parent how he shall bring up the child, the degree of comfort in which the child shall live, the guaranty it shall have of comfortable clothing and schoolbooks. It compels the child to go to school, and forbids the parent to interfere in this matter. It also forbids the employment of any child under sixteen years of age in any factory or other dangerous occupation.

The government has also gone far to protect the comfort of the public. If to-night two men meet in the street under my window and engage in a quarrel over some subject in which I hold no interest, and reach a degree of violence sufficient to wake me up,

I can have them both arrested and sent to jail, not for what they were doing to each other, but because they woke me up.

If government may go that far for the mere comfort of the public, how far can it not go for the protection of the life and health of the people?

Judge Huggins, the presiding officer of the Kansas Industrial Court, said, recently:

The Anglo-Saxon people in general accept without question the authority and jurisdiction of their courts to adjudicate all matters affecting the life, the liberty, and the property of the citizen. If a man's right to life is justiciable, if his liberty, which to the Anglo-Saxon is dearer than life itself, can be taken away from him by the judgment of a court, surely disputes as to wages, hours of labor, and working conditions are also subject to the adjudication of courts. A man who has no faith in the courts has no place in a government of democratic institutions.

The most astonishing and disappointing development since the passage of the law has been the determined opposition of union-labor leaders that it shall not function. The court has now rendered more than a dozen decisions which relate to wage cases, and in practically every one it has increased wages in obedience to the justice of the situation. These awards have been received without gratitude by the laborers and obeyed without contest by the operators.

In one instance, that of the railway-car men of the Pittsburg-Joplin district, the president of the Kansas Federation of Labor brought the petition for an increased wage. Upon a full hearing of the case the petition was granted and the award asked for re-

ceived. Thousands of railway men are benefiting as the result, yet the president of the Kansas Federation of Labor, who brought the action in court, has been fighting the court, and gives as his reason that the national organization to which he belongs is opposed to the principle of the law.

Samuel Gompers began to fight the law before he had read it. The entire group of radicals in the leadership of labor is fighting the law, even without inquiring as to whether it may be a blessing. Their reason is apparent. If the Kansas law functions, it relieves the situation of the necessity of a highly paid leadership. The agitator's occupation is gone. One of the orders sent out from a national labor leader when the Kansas legislature was in session was to the effect that the Kansas law must be kept from spreading.

## XV

### THE WEAKNESSES OF ARBITRATION

**T**HE typical industrial arbitration board is not an impartially minded tribunal at all, but a body composed chiefly of special pleaders and advocates.

According to the general understanding, arbitration is the act of adjusting a dispute by an unofficial private board consisting of three elements, one chosen by each of the two contending parties, and the third selected by the two already chosen. The number of elements may vary, but the general principle running through arbitration is that the contenders are heavily and equally represented. There may or may not be neutral representatives. In the great majority of industrial cases the neutral part of the tribunal is outweighed, and the major part of it is composed of persons who are prejudiced toward one side or the other of the controversy at hand.

Let us assume that the three elements are persons, designated A, B, and C. A and B either belong to the two contending groups or are known to hold such views as will assure their decision in favor of the group that chooses them. They go into the meeting

with their minds made up to vote for their own special interest and to obtain the maximum award. This is not mere theory—it is a fact backed up by practical observation. Their services are therefore valueless because equally offsetting, and as far as an impartial decision is concerned they might as well be eliminated altogether, leaving C to decide the case alone after hearing their pleadings.

In effect, then, this third element, C, being theoretically disinterested, is a kind of an industrial court in himself. The other two parties are mere attorneys for one side or the other. Now what about this unofficial court, C, that remains? What value may be placed upon his decision which usually prevails in the form of a compromise?

It is entirely possible that the third party may be favorably disposed toward both capital and labor and be heedless of the interest of the public. For instance, he might stipulate an unreasonable raise in wages and an unreasonable advance in the price of a product as a convenient mode of getting rid of the question, thus unduly benefiting both contending parties at the expense of the public.

Being chosen for a specific purpose, he is not answerable to the public. He may join with A or B and effect a partisan decision, leaving one of the groups rebellious and dissatisfied, or he may effect a compromise. In any case, the two contending groups enter the arrangement knowing that the decision is not binding, and the whole affair becomes

nothing more than a debate and a discussion of matters already known.

It is argued that arbitration has worked well in the case of boundary disputes and similar private controversies. Let us grant this is true. The fact remains that in such disputes the paramount interest of the public scarcely ever enters as a factor. No class interest is involved. The arbiters are comparatively open-minded because there is no historic or deep-seated prejudice to be overcome. But here is the most important factor of all, and this factor is usually overlooked by the champions of arbitration. If civil arbitration fails, the contending parties know they must resort to the court of law; hence they are constrained always to accept what their consciences tell them to be reasonably fair by the knowledge that there always lurks in the background the resort to the process of law, which may not be overridden. It is the law standing in the background that makes arbitration successful in civil disputes. Hence the summarized history of arbitration in so far as it is successful really argues in favor of, rather than against, the establishment of an industrial tribunal backed by the power of government.

The great difficulty with industrial arbitration is that it has never been backed by any satisfactory resort to law. Participants have gone into it with skeptical minds and without a feeling of respect for the anticipated findings, which have been discounted in advance.

The history of Anglo-Saxon law contains many instances of resort to arbitration in industrial disputes. Under the Elizabethan statutes conflicts over wages and other labor questions were placed in the hands of magistrates, and the acts applied only to certain trades. Later the power was taken from the magistrates and lodged in the hands of chosen or appointed referees.

In 1824 the allied acts were consolidated and replaced by the Act of 5 Geo. IV, Cap. 96, entitled, "An act to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen." This was modeled after the French Conseils des Prud'hommes, to which reference will be made later. It provided for compulsory submission to arbitration. A justice of the peace or a board named by him heard and decided the case. Wages were not set except by mutual consent of the two parties. This act is still enforceable, but seems to be rarely employed.

The obsolescence of this act may be partially explained because of the fact that industrial disputes, until modern times, did not assume the proportions of public menace, and under primitive industrial conditions the courts found it a thankless task to exercise what seemed to be meddling in private and very localized jangles. The virtue of the act does not apply in the case of the modern industrial court.

The Conseil des Prud'hommes, in France and Belgium, is a very interesting development along the

line of an effort to adjudicate industrial disputes. It was established at Lyons by decree of Emperor Napoleon I, March 18, 1806. On June 1, 1853, the law was amended, giving employers and employees equal representation. Although this tribunal shows some of the attributes of an industrial court, it bears the same old defect of being composed mostly of special pleaders.

At first the members were elected, but later the positions were made appointive. The conseils are judicial tribunals established by the request of the individual city affected. This, by the way, presupposes a localized condition which is not found in modern industry. The officers are the president, vice president, secretary, and six members. Three of the members are chosen by employers and three by employees, and they hold office six years, serving without pay.

There are two bureaus in the conseil. One is private and is conciliatory and informal. It attempts to settle disputes by agreement. The other bureau conducts formal trials. It deals with limited cases. Those involving more than two hundred francs may be appealed to civil courts.

In the year 1878, for instance, 35,046 cases were brought before the conseils; 18,415 were settled in private, 9,046 in the formal bureau, and formal judgments were entered in 7,555 cases, according to Joseph D. Weeks in the *Cyclopedia of Political Science*. Of the causes, 21,368 related to wages.

The history of the conseil is instructive in that it is a move in the direction of industrial adjudication. It demonstrates that government may profitably intervene in industrial disputes. The weakness, as indicated, lies in the fact that it leaves the interest of the public in a subordinate position, this being due, undoubtedly, to the fact that it was formed under primitive industrial conditions when the public was not materially menaced by industrial disputes.

The conseil has the same fault as the typical arbitration board—that of being loaded up with men representing specific interests—advocates rather than judges. It seems that the permanent body, consisting of three officers, is the real tribunal, the other six being special pleaders. Take away the six “*prud’hommes*” and make the conseil a state national body and you will have something like the industrial court.

Turning back to England again, we find that the compulsory arbitration act was superseded by voluntary arbitration, and an attempt to give this legal standing was made in the Lord St. Leonards Act, which provided for a council of conciliation upon the joint petition of masters and workmen. The award was final and conclusive, but wages could not be set except by mutual consent.

In 1872 another act for binding arbitration was passed but not often employed. The pendulum then swung back to voluntary arbitration again, and Mr.

Rupert Kettle was knighted because of his service in promoting this form of peacemaking.

Throughout the history of industrial arbitration there occurs the phenomenon of swinging from compulsory to voluntary and back again. Neither has proven satisfactory. The ideal spirit of arbitration is inherently that of voluntary agreement, and it cannot be bent to the form of compulsion. The contenders cannot feel great respect for the decisions of bodies composed mostly of special pleaders, no matter how able or high-minded the pleaders may be. The atmosphere of the arbitration board is not that of calm, detached impartiality, but of prejudiced and clashing viewpoints, of pulling and hauling and jockeying for position.

Voluntary arbitration proves inadequate because it cannot be enforced and neither side is bound to accept the decision. The proceedings amount to nothing more than a debate and a comparison of notes.

Compulsory arbitration in great industrial disputes proves inadequate because it is founded on the wrong principle. It is founded on the principle that a body composed mostly of special interests or special-interest advocates may be given authority by the government. Such a body is foreordained to failure. We do not decide divorce cases by setting up a board of three—one representing the women, another representing the men, and the third representing some one else whose status is not clear. We

place the case wholly in the hands of a disinterested tribunal and the tribunal represents the majesty of the law—the government of the state. This is done not merely to adjust the trouble between the man and his wife, but in the interest of the community as a whole.

Compulsory arbitration has not had good results in Australia. In order to bring about a clearer understanding of the situation as related to the Kansas court, attention will be called to the contrast.

Australia has several industrial courts, with as many codes as there are courts, but the fundamental principle of each one of them is arbitration. All the orders and awards of these courts of arbitration are enforced by means of money penalties, which vary from a thousand pounds, for violation of the provisions against strikes and lockouts, to ten pounds. These penalties, so far as labor is concerned, are levied only against registered unions. It is obvious, of course, that these fines, which must be collected in some civil court, as other money judgments are collected, have had little effect in really penalizing unions.

Another feature of both the Australian and New Zealand law is that a union-labor organization which has not been registered under the law is exempt from the operation of the court, and there is no provision in unions of this sort for even the arbitration of their difficulties.

The Kansas law deals directly with employers and

workers and by the group or craft of workers in any industry affecting the public interest, and no registration is required. Any union or association which shall incorporate under the law of the state shall be recognized as a legal entity and may bargain collectively. Individual members of all incorporate unions may avail themselves of collective bargaining by appointing an officer or officers to represent them.

Another peculiar feature of the Australian court is that either aggrieved party may appeal from the rules of procedure to the Parliament, an unfavorable vote from either house of which renders the act of the court void.

In the Kansas court the rules of procedure are promulgated by the court. There is no comparison between the operation of the courts and little comparison as to their related purposes. The Australian court has as its chief purpose the protection of arbitration agreements. The Kansas court has as its chief purpose the protection of the public against industrial warfare. It provides for the impartial adjudication of the rights of labor, capital, and the public, upon its own initiative.

In Australia the court takes cognizance only of the agreements of arbitration in all industries, and to be eligible to the use of the court the union must be incorporated. It is founded wholly upon the principle of arbitration and was originated primarily by labor unions for the encouragement of union

organization. It has no interest in the rights of the public and no means of protecting these rights.

The Kansas law takes cognizance of disputes, grievances, and conditions, acting through complaint or upon its own initiative, and limiting its endeavor to essential industries. It is based upon the oldest theory of government that these industries are impressed with a public interest and are therefore subject to reasonable regulation for the welfare of society.

One is a court of arbitration, with the usual preliminary steps of conciliation; the other is a court of justice, presided over by impartial judges.

There is no appeal from the decision of the courts of arbitration in Australia, except to the Parliament. In the Kansas court there is an appeal to the supreme court of the state, whose decision is final.

The experiments in Australia and New Zealand provide absolutely no precedent for the Kansas effort. They are more nearly in line with the program of the second Industrial Conference than they are with the Kansas Industrial Court.

In Australia and New Zealand the costs of the case are taxed against the party losing the suit in the same manner as costs are taxed in our civil courts, and security for costs may be required by the court before the case is taken.

In Kansas the state provides for all the costs.

The Australian Act, which is entitled "An Act relating to the commonwealth Court of Conciliation

and Arbitration," was enacted in 1911, and pertained only to people engaged in public service, and service of any public institution or authority of the commonwealth; it includes all persons employed in any service in any capacity, whether permanently or temporarily under the commonwealth, but does not include persons employed in the naval or military forces.

This Act provides that an association of employees under the commonwealth may be registered under the Act, which association gives the names of each member, and the association has the privilege of filing a complaint before the Court of Commonwealth Conciliation and Arbitration for any claim relating to salaries, wages, rates of pay, terms of condition of servitude. The Public Service Commissioner and the Minister of any department of state affected by the claim shall be entitled to be represented before the court in the hearing. Any such claim may be by the court referred to a judge of the state court or special magistrate of the commonwealth for investigation and report, and no costs are allowed, and under such proceedings no counsel or solicitor shall be employed. Every award made by the court shall be laid before Parliament, as this Act pertains only to public service.

The Canadian Industrial Disputes Investigation Act has resulted in some success in averting strikes. In the period of 1910 to 1916, applications for the appointments of investigation boards were received

to the number of 215, involving 350,000 employees. In 183 of the applications boards were granted, the remaining cases being settled without boards. Strikes were averted in all but 21 cases.

The general provisions of the Act are:

Either party to a dispute may make application to the Minister of Labor for the appointment of a Board of Conciliation and Investigation, to be composed of three—one from each party to the dispute, appointed by the Minister, the third appointed on the recommendation of these two.

It does not apply to disputes affecting less than ten employees.

If the board does not effect a settlement it makes a complete report to the Minister, recommending a course of action, all of which is published in the official paper of the Labor Department. Witnesses are compelled to testify, and full powers of investigation are granted. Proceedings are held publicly, except when otherwise determined.

Strikes or lockouts are prohibited pending or prior to the reference of the dispute to the board. After the decision strikes and lockouts are permissible. Violations are punishable by fines.

Either party may agree in writing to abide by the decision of the board. Courts shall not recognize testimony before the board.

It seems that the employers favor this Act, but the labor organizations are against it. In 1916 the Trades and Labor Congress of Canada voted unanimously for its repeal.

It will be seen that this board has the same defect as the typical industrial arbitration board, and it lacks the power to proceed to a logical conclusion.

After considerable discussion the legislature of the state of New York has passed an arbitration Act by which arbitration agreements in contracts voluntarily entered into are valid, enforceable, and irrevocable. This arrangement is somewhat like that proposed by the President's Industrial Conference, which will be discussed later.

The Kansas Industrial Court is not conducted upon the principle of arbitration, but it accomplishes all the good ends of the conciliation and arbitration boards as an incidental function.

It has the power to investigate housing, living conditions, working conditions, wages, and other possible causes for dispute. It has the power to remedy evils. For example, the court found that in the Kansas coal-mine district the operators were loaning money that already belonged to the miners. The miners would sometimes become short of money before the semimonthly pay day, and would get an advance. The period of advance averaged about one week. The operators were charging 10 per cent for this service, or at the rate of 520 per cent a year. In eighteen minutes the court made a ruling that abolished this practice, and thereby saved the miners much money. There are many other instances of practical humanitarian things the court has done as a part of its day's work, the constant aim being to

do away with friction. Frequently formal court orders are unnecessary. A hint is sufficient. Never before was there a body with authority that could step in and remove the cause of industrial discontent in this way.

The court has the power to subpœna witnesses and hold informal hearings, at which both sides may present their claims. It has access to the services of trained engineers, scientific workers, and welfare experts. It has the power to get disputants to talk things over across the table and arrive at an unofficial agreement. It has already prevented several clashes in that way.

Every good function attributed to arbitration and conciliation boards has been appropriated by the Kansas tribunal, and the weak features have been avoided.

The chief fault of industrial arbitration, fundamentally, is not that of commission, but of omission. It is only a rudimentary and defective form of adjudication not suited to the handling of sweeping industrial issues. It omits what is most necessary in adjudication—namely, inherent and fairly constructed authority, and the application of police - power principles.

The only reason arbitration is successful in boundary disputes and similar squabbles is that people resort to it with the knowledge that if it fails there is the law standing in the background, with full power to act.

If industrial adjudication is to be successful there must be the background of law there also. There must be some unquestioned power to back up decisions, and that power must grow out of the knowledge that the tribunal is not a cabal of clashing special interests weighed down under suspicion and pressure, but an impartial body representing only the public and its government—answerable only to the public and its government—impressed with the knowledge that exact justice to labor and capital alike is ultimately the thing most to be desired from the standpoint of public welfare.

In the United States the principle of arbitration has been employed often, and a vast amount of effort has been expended upon various modifications of the principle. To prove that the general principle has been a failure it is only necessary to call attention to the fact that the strike evil has constantly increased.

President Wilson, on December 1, 1919, called a number of highly qualified and conscientious public men together in a conference, in an effort to formulate a plan looking toward relief from industrial strife. After a few weeks of consultation a preliminary report was filed. After New-Year's the group reconvened and spent nearly two months in making plans. On March 6, 1920, the final report was made public.

To one who has not been up against the hard, practical facts, the plan looks attractive. Even one who has been through the hard knocks of industrial

conflict is impelled to yield a large measure of admiration to the sincere sermons contained in the report and to the effort to get somewhere on the project of a tribunal without breaking ikons.

The findings are excellent as far as they go, but they stop just short of effectiveness—the thing most needed. The report seems to be built upon the philosophy that the important thing is to bring about that elusive matter of voluntary co-operation between the two contending elements without restricting the liberties of the two or protecting the interests of the public. The rights of the public are very much in the background, and virtually nonrecognized.

In discussing the development of industrial relations from the dawn of history, the report says:

While the relations between employers and employees are primarily a human problem, the relationship in its legal aspects is one of contract. In the development and establishment of this right of contract on the part of workmen is written the history of labor.

Farther on it says of the freedom of labor:

It may aid in comprehending the work of the conference to recall that the present condition of freedom has come about not so much from positive laws as from the removal of restrictions which the laws impose upon the rights and freedom of men. The conference confesses that in the prosecution of its work it has been animated by a profound conviction that this freedom that has been wrought out after many centuries of struggle should be preserved.

Section 11 says of any decision of the proposed tribunal:

It shall have the full force and effect of a trade agreement, which the parties to the dispute are bound to carry out.

The whole system of proposed machinery, therefore, resolves itself simply into a device for hastening and facilitating collective bargaining. The public is excluded as a factor in the resultant decision, for that decision is regarded as a private contract and not as a government decree. It takes no advance step so far as fundamental philosophy is concerned.

The report proceeds in two phases—the recommendations involving legislation, and the purely advisory opinions. The legislative recommendations are conservative and hesitant, suggesting only a national tribunal and regional tribunals and inquiry boards, whose sole purpose shall be to narrow the field of arbitration and hasten and facilitate industrial agreements between employers and employees. No penalty is provided except publicity.

The conference evidences much alacrity in deserting the concrete in favor of the abstract. If the plan itself guaranteed the performance of all the fine things it preaches, this report would have been an industrial Magna Charta, for it contains a great abundance of good intention and intelligent thought. The great trouble is that merely recommending or painting the beauties of industrial peace does not insure industrial peace any more than the prospectuses and reports of the Federal Trade Commission prevent profiteering.

The guiding thought of the conference has been that the right relationship between employer and employee can be best promoted by the deliberate organization of that relationship [says the report]. That organization should begin within the plant itself. Its object should be to organize unity of interest and thus to diminish the area of conflict and supply, by organized co-operation between employers and employees, the advantages of that human relationship that existed between them when industries were smaller. Such organization should provide for the joint action of managers and employees in dealing with their common interests. It should emphasize the responsibility of managers to know men at least as intimately as they know materials, and the right and duty of employees to have a knowledge of industry, its processes and policies. Employees need to understand their relation to the joint endeavor so that they may once more have a creative interest in their work.

Such admirable sermons are needed. Others of equal merit are found in the report. They will receive respectful attention and will do good. But they are sermons. "The plan involves no penalties other than those imposed by public opinion," says the introduction. Public opinion was not getting much coal out of the ground last winter. Public opinion has not stopped profiteering. Law, after all, is crystallized public opinion. The Kansas court is established upon the theory that public opinion has amply and sufficiently crystallized on the subject of whether class minorities should be permitted to ride roughshod over general majorities.

In the matter of prevention of disputes the conference urges employee representation, though it admits that it "offers no royal road to industrial peace." One valuable and constructive suggestion

that deserves special consideration is that regarding the establishment of courses of instruction in technical schools and colleges which shall teach the principles of employee representation.

The recommendations concerning the hours of labor, women in industry, child labor, housing, wages, and profit sharing, while they do not present anything new, are excellent indices of intelligent and sincere study on the part of the conferees. The remarks on thrift agencies contain much constructive suggestion, as do also those on inflation and the high cost of living. In taking a definite stand against the unionizing of public employees in police or fire-protection service the conference makes its position clear and logical. The remarks on agriculture are generally valid, but not enough emphasis is placed upon the obligation of labor to keep its productive capacity up to that of farming.

The subject of unemployment and part-time employment is intelligently handled, leading to that of a proposed public employment clearing house which, if established, would serve as a parallel with the Federal Reserve financial system. It would distribute labor in such a way as to bring about the maximum productiveness in the nation.

As a whole, the report justifies the existence of the conference, whose labors were well worth while. The deficiency is that it does not go far enough and that it approaches the problem from a purely economic angle, without reference to the rights of the public.

This opinion is given in a spirit of sympathy and appreciation for the sincere and valuable efforts made by the conferees, and is not intended as being in the nature of a judgment. The conference is of such outstanding importance that no book touching on industrial relations could be complete without some discussion of the conference report. It is felt that emphasis must be laid upon the different philosophy followed by the Kansas court, so there may be no confusion, and so that comparative study of the two philosophies be stimulated. Candor requires that the contrast be made.

Government is more than a sordid commercial transaction. It is greater than a collective bargain between two special interests. It is properly the will of all the people, and it must safeguard the welfare of all the people. Any plan that places the big vital affairs of life on the plane of a collective bargain is founded on a defective conception of the due prerogatives and obligations of government. The decisions that control the very life and liberties of the people must be made on grounds of impartial public policy and general police powers, and not upon grounds of private expediency or special interest. There is a party of the third part to be considered.

## XVI

### SPECIALIZATION IN INDUSTRY

**I**N the pageant of the labor movement as it passes by, typifying at first slavery, then feudalism, then apprenticeship, individual contracts, guilds, and unions, there is one great factor which we are likely to ignore.

We have seen how organization has become perfected through the centuries and how labor has benefited itself through that organization. In the meantime the machine process has been perfected with equal rapidity. And with the development of the machine process there was developed, as a corollary, the evolution of the specialist.

Never before in all history has there been such an era.

Only a few decades ago thousands of individual blacksmith shops were at work turning out horse-shoes. The individual blacksmith was dependent wholly upon his own efforts for his living. He took an honest pride in his work. Working his bellows and smoking his pipe, he paused occasionally to smile upon a passing child or exchange a jocular remark with the bystander. As he saw the flame turn the

iron into a malleable red, and as he saw the metal take form under his shrewd blows, the work he did partook of his own life, in a way of speaking, just as the home one builds or the song that one composes. And when the day's work was done he looked upon it, and it was good. Ever since God took the bit of nebula and formed it into a world, the creator has taken a pride in his handiwork and has felt that it was a thing worth while.

Now the thousand blacksmiths are taken in a body and put in a great factory, and they stand there all day, tending strange machines.

The machine devours the raw iron bars and delivers horseshoes or tire rims by the thousand. One is just like the other. None bears the mark of the individual worker. The product streams out of the factory unimpressed by the pride of personal creation. One group of men specializes on one limited product. In an automobile-motor factory one man turns out a little pin for a spark plug. The pins come out by the thousand. The worker can have no personal pride in the finished machine, for his contribution is only an insignificant, hidden part.

With nearly all industry highly organized on such bases as this, the worker has no labor incentive except the money wage and whatever of associations he can form in spare moments. He is likely to become bitter and irritable. The personal contact with the employer is gone. Labor becomes a dreary routine in a gigantic and seemingly heartless money-

making mechanism. He is like a helpless cog, impersonal and dehumanized, and he comes to have some realization of this.

The story of David Maydole and his hammer is something of an epic in the industrial world.

Maydole was a humble blacksmith in a New York village about a century ago. One day a carpenter came to him and told him to make the best hammer he could. Maydole went to work and produced an excellent hammer. Other carpenters came to him. The contractor then asked him to make a still better hammer.

"I can't make any better hammers," said Maydole.  
"Every one I make is the best I can make."

His fame spread and he became a wealthy manufacturer at last. The word "Maydole" stamped on a hammer was a guaranty of its excellence.

He never allowed a hammer with his brand to be made by machinery. He took a personal pride in every one that went out of his factory.

Now hammers are turned out by machinery almost altogether. The machine-made hammers may be as good as those made by hand, but they do not carry the impress of the human touch.

Under the old conditions of industry, friction between employer and employee was remedied with comparative ease because the worker was tied to his product and to his employer by a personal bond. Under modern conditions we need not only a great extension of employee representation, profit sharing

and welfare work, but an authoritative arm of government standing out in the background with power to correct and prevent causes of friction. The worker must be made to feel that he is not left at the mercy of his employer and that his only recourse against injustice is force as exerted through the strike. The feeling that cave-man tactics are the only ones that stand between him and injustice has the tendency to breed bitterness and suspicion. It makes the worker feel always that his employer is a potential enemy.

With the necessity for strikes replaced by the ever-ready protecting arm of the government, the feeling of antagonism will naturally be abated.

In connection with the adjudicatory features of the industrial court there is the machinery for conciliation, inquiry, and informal orders as to wages and working conditions. As time goes on there will be less and less tendency to fight things out by formal litigation, and more and more of a tendency to prevent or settle difficulties out of court. Thus a constant contact will be brought about. Employee representation will increase as a natural fruit of the court. More generous profit participation will be promulgated. Welfare measures will be increased. Working conditions will be improved—all in preclusive anticipation of court proceedings. A closer personal contact will be brought about between employer and employee by these things. There will be more gathering around the table. In this way the

dehumanizing influence of modern industrial conditions will be counteracted, and an era of good feeling restored.

This may sound visionary and idealistic to the skeptical reader, but let him pause and ask himself honestly whether anything could be worse than the armed truce which obtains under the tooth-and-claw method, where the only way of guaranteeing results is by force. Is it not reasonable to suppose that the background of industrial law will stimulate the formation of unofficial means of conciliation and agreement, just as the background of civil law has stimulated the working of unofficial agreements in the ordinary controversies over contracts and commercial transactions?

It is said that in the New York Stock Exchange a breach of faith is unknown. Orders are given and received verbally, and purely upon personal assurances. This practice is made possible, not because the operators are more honest than the average run of humanity, but because there always stands in the background the certainty of prompt retribution and civil action in case of dereliction.

If there were no civil law and no recourse in case of fraud, the present methods of the Stock Exchange would be impossible. The tooth-and-claw method would return, and the finely adjusted mechanism on Wall Street would cease to function.

There has never been an era like that of the present. The great groups of specialists in the in-

dustries will have to be co-ordinated with society and mutual sympathy, and mutual sympathy and co-operation will have to be restored, otherwise society must continue to suffer from the facts of inefficiency, friction, and lost motion.

The new era of industrialism, with vast new implications, is upon us. It must be met with the potentiality of wise and just governmental regulation, otherwise it will supplant government itself.

## XVII

### COLLECTIVE BARGAINING

THE law establishing the Kansas Court of Industrial Relations specifically authorizes and recognizes the principle of collective bargaining. No discussion of labor problems nowadays is complete without a reference to collective bargaining, and there has been some tendency to indorse it with a sweeping gesture and without definition, leaving the observer in a rather confused frame of mind.

Everybody knows that organized labor desires to safeguard collective bargaining, and so a great many people take a casual glimpse at it and say it is a good thing, not having a very clear idea of what it is they are indorsing.

It may be seriously doubted, in fact, that all the labor leaders really understand what collective bargaining is.

“It takes two to make a bargain.” This is axiomatic and self-evident. And yet some labor leaders seem to act upon the theory that it binds only the employer.

The chief difficulty in the coal-strike troubles in the summer of 1920 was the fact that some of the

union leaders and miners deliberately set about to violate the agreement of the previous winter, which provided for a six-day week. They seemed to think that the employers could be bound in the matter of wage payments, but that there was no reciprocal obligation on their part. In taking such a stand they did more to injure the general cause of collective bargaining than all the employers in America.

It is one thing to oppose collective bargaining; it is a far more serious thing to violate a bargain that has been made. Doubtless employers have violated such bargains, and shame must be upon them for so doing. But two wrongs do not make a right, and labor leaders will have to learn that contracts must be observed, otherwise collective bargaining cannot exist.

A great many labor leaders seem to proceed upon the theory that a collective bargain is merely an arrangement for settling a strike, wherein the employer agrees to certain demands without visiting any retaliation upon any of the workers. Their conception of a collective bargain is that it is a surrender to a collective threat. In other words, they consider it a one-sided arrangement in which the employer is bound, but not the employees.

The Kansas law seeks to place collective bargaining upon a dignified and well-observed plane, by recognizing its validity and providing facilities for making bargains, not only by incorporated unions, but by groups of unorganized laborers.

**Section 9 of the Industrial Court law says:**

The right of every person to make his own choice of employment and to make and carry out fair, just, and reasonable contracts and agreements of employment is hereby recognized.

**Section 14 says:**

The right of such corporations, and of such unincorporated unions or associations of workers, to bargain collectively for their members, is hereby recognized.

This furnishes protection to unincorporated unions in addition to that afforded to incorporated unions.

There is a curious paradox about the subject of collective bargaining which illustrated the confusion of mind that exists. Labor leaders are quite unanimous in saying that "labor is not a commodity to be bartered," to borrow the language used by Frank P. Walsh. How can the two standpoints be reconciled?

The only way the confliction can be cleared up is by assuming that the collective bargain is a one-sided arrangement—that is, that the group does not sell its services to the employer upon certain terms—it only makes a negative bargain by telling the employer that the members of the group will not work unless certain demands are met. If there were a positive bargain, of course the group would be bartering its services as it would a commodity.

If collective bargaining is to be put upon a dignified plane, of course it must have more than a negative meaning. It must work both ways. If a positive

two-way bargain cannot be made, there surely must be something wrong somewhere.

There may be good reasons why labor leaders will eventually cease to stress collective bargaining when it is seen that it must necessarily imply the commodity theory of labor to some extent. Labor has two functions. One is the personal—or it might be called the spiritual—phase. It is that function of labor that represents the worker giving his life's vigor to the daily task. When a man gives a part of his life to a thing he is not selling a commodity. It is a repellent idea to think of a man selling his very self. In this respect labor is not a commodity. But there is the other function of labor—the tangible element with an exchange value. Labor is readily translated into product. Labor is the one and only thing that gives iron any value. If no labor was required to produce iron—if it could be snatched out of the air without effort—iron would have no value. Iron is bought and sold. It is a commodity. It is the labor that is bought and sold, for the iron without the labor is valueless.

When a man “lays off” because he has enough money to tide him over an idle period, he is playing his money—capital—against his labor. He is conceding that his money takes the place of his labor. He is admitting that his money is equivalent to his labor. This is not a sentimentally attractive statement of the case, but it is true. In considering the spiritual value of labor we must also remember that

house rent, fuel, food, and other things may sometimes also partake of the semisacred characteristics, for they may mean the difference between life and death. They may represent life, as does labor. And they have a cash value. They are commodities, in one sense. The Kansas law seeks to safeguard all of the sacred rights of men, whether they be the rights to fuel, food, clothing, or the rights to fair living and working conditions. It would keep a sane balance between the sacred human rights and cash or property rights.

In considering the subject of collective bargaining, therefore, it is well to keep the two functions of labor in mind. At best, the subject is a complex one, and there is not a good field for cocksure pronouncements.

For the purposes of this thesis, however, it is sufficient to say that there is good sense and reasonableness in the custom of a labor organization or group saying to the employer, "Our services are worth so much per day; we will agree to work upon such and such terms for a period of one year; we will contract to perform our part of the bargain and you will contract to fulfill your part." This is good business sense and practice. It simplifies employment, insures a larger degree of fairness to the whole group, and makes for efficient transactions. It tends to prevent exploitation of labor in slack periods and it tends to insure a constant output.

Collective bargaining is a complex process. It deals with the sacred element of labor, and the sa-

credness of contract should be observed likewise. A careful distinction should be made between the cash value of labor and the spiritual value. Each value should be kept distinct and in its proper place so that the spiritual value may be kept intact.

The Kansas law recognizes and encourages collective bargaining—not to promote the idea of bartering labor, but to preserve the best benefits of organization. It seeks to make the labor leaders responsible for the contracts they sign, and when contracts are faithfully fulfilled by employer and employee they attain a higher degree of respectability and prestige. The Kansas law does not contemplate or threaten any weakening of unions or any vitiation of labor's spiritual values. It contemplates strengthening them by giving them useful and humanitarian functions. It seeks to make unions more valuable to themselves as well as to the public.

## XVIII

### SOME LEGAL PHASES OF THE INDUSTRIAL COURT

**I**N 1548, under Edward VI and Elizabeth, a law was passed restricting the activities of laborers. A part of it is reproduced herewith:

Artyficers, handycrafte men and laborers, have made confederacyes and promyses and have sworne mutuall othes, not onlye that they shoulde not meddle one withe an others worke, and performe and fynishe that an other hath begone, but also to constitute and appoyn特 howe muche worke they shoulde doe in a daye and what howers and tymes they shall work, contrarie to the Lawes and Statutes of this Realme. Everie person so conspiring, covenantinge, swearing or offendinge . . . shall forseyt for the firste offence tenne pounds . . . or twenty dayes imprisonment.

Repetitions of offenses were punished with great severity.

It was with such crude and absurd efforts that the Anglo-Saxon governments tried to cope with certain abuses which they felt but could not correctly gauge.

It will always be the task of labor lawmakers to convince the workers that no such absurd or unjust restrictions are to be made, but, on the other hand, positive means will be provided to encourage legitimate unionization and make easier the ways of securing better conditions for labor.

Civilization has profited by the "horrible example" of the early efforts. Just government will avoid the palpable injustices of the old tyrannical laws.

The beginnings of industrial law, crude and unjust as they are, are an indication, however, that civilized society has always felt a vague, instinctive need for extending its judicial arm over industrial as well as criminal and civil affairs. That need is intensified with the prevalent centralization of power.

"The earliest notion of law is not an enunciation of a principle, but a judgment in a peculiar case," says Theodore W. Dwight of Columbia University. "The only authoritative statement of right and wrong is a judicial sentence rendered after the facts have occurred."

There is good reason, therefore, why students of labor problems should not be too closely bound by precedents. They should not compare modern industrial legislation with that of former centuries. Modern conditions have created a new set of facts, and we must judge the propriety of law upon the facts and not wholly upon theories. They should not jump at the conclusion that modern industrial courts are aimed at labor simply because in former centuries much of the industrial law was oppressive to labor.

It is well to bear in mind always that law is a progressive, and not a static thing.

The supreme courts are making decisions in this decade that they would not have made fifty years

ago. They are properly alive to the growing requirements of a growing civilization.

The standpat mind is always ready to protest, "Oh, but it has not been done—it cannot be done." The progressive mind is always ready to inquire into the new facts that are constantly arising, adjusting principles with facts until a workable program is evolved.

It should not be inferred that the Kansas Industrial Court is founded entirely upon new facts and principles, however. There are ample precedents. There are plenty of decisions of past decades which go to show that the industrial code is an inevitable fruit of this epoch. Both state and Federal courts have handed down decisions that support the fundamental theory of the Kansas court.

One of the most interesting cases is that of *People vs. Fisher*, decided in 1835 by the court of last resort in the state of New York, holding a conspiracy of journeymen workmen of any trade or handicraft to raise their wages by entering into combinations to coerce journeymen and master workmen employed in the same trade or business, *for the purpose of regulating the price of labor and carrying such rules into effect by overt acts, is punishable as a misdemeanor*; and it was accordingly held that when journeymen shoemakers conspired together and fixed the price of making coarse boots, and entered into a combination that if a journeyman shoemaker should make such boots below the rate established he should pay the

penalty; and if any master shoemaker employed a journeyman who had violated their rules, they would refuse to work for him and would quit his employment, and carried such combination into effect by leaving the employment of a master workman in whose service was a journeyman who had violated their rules, and thus COMPELLED THE MASTER SHOEMAKER TO DISCHARGE SUCH JOURNEYMAN FROM HIS EMPLOY—that the parties thus conspiring were guilty of a misdemeanor and punishable accordingly.

In the course of the opinion the court said:

Nor is a mechanic obliged by law to work for any particular price. He may say that he will not make coarse boots for less than one dollar per pair, *but he has no right to say that no other mechanic shall make them for less.* . . . If one individual does not possess such right over the conduct of another, no *number of individuals* can possess such a right. In the present case an industrious man was driven out of employment by the unlawful measures pursued by the defendants, and an injury was done to the community by diminishing the quantity of productive labor and of internal trade. . . . If the defendants cannot make coarse boots for less than one dollar per pair, let them refuse to do so; but *let them not directly, or indirectly, undertake to say that others shall not do work for a less price.* . . . The interference of the defendants was unlawful. Its tendency is not only to individual oppression, but to public inconvenience and embarrassment.

The foregoing opinion of the early New York court is a correct statement of the common law as it has always existed both in England and in the United States. In most statutory enactments for the punishment of combinations in restraint of trade in this country, in order to avoid the application of this

principle, labor and farmer organizations have been generally excepted from the operation of the statutes, while the restraint of trade by some classes of citizens have been made criminal and severely punished, and others have been exempted.

The case in the United States District Court for the District of Arkansas, *Hitchman Coal and Coke Co. vs. Mitchell*, 245 U. S., 229, has a certain angle which touches the Kansas theory.

The United Mine Workers had compelled the employees of the coal company to join the union without the knowledge of the employer, and when 20 or 30 per cent had joined the union, a strike was called for the purpose of forcing the mining company to maintain a closed shop.

In deciding this case, the United States court said:

The right of workingmen to organize for legitimate business and to enlarge their organization by inviting other workingmen to join is not so absolute that it may be exercised under any circumstances and without any qualifications, but it must always be exercised with reasonable regard for the conflicting rights of others.

The decision held the United Mine Workers union to be an illegal organization, and the Supreme Court of the United States upheld the decision. In this case the plaintiff received a judgment of \$600,000.

One of the interesting cases to read in connection with the theory of the Kansas law is that of the German Alliance Insurance Co. *vs. Lewis*, 233 Supreme Court of the U. S., page 389 (the Kansas fire-

insurance rating case). There the Supreme Court says:

The cases need no explanatory or fortifying comment. They demonstrate that a business, by circumstances and its nature, may rise from private to be of public concern, and be subject, in consequence, to governmental regulation. And they demonstrate, to apply the language of Judge Andrews in the Budd case (117 N. Y., 27, 5 L. R. A., 599, 15 Am. St. Rep., 460, 22 N. E., 670), that the attempts made to place the right of public regulation in the cases in which it has been exerted, and of which we have given examples, upon the ground of special privilege conferred by the public on those affected, cannot be supported. "The underlying principle is that business of certain kinds hold such a peculiar relation to the public interest that there is super-induced upon it the right of public regulation." Is the business of insurance within the principle? It would be a bold thing to say that the principle is fixed, inelastic, in the precedents of the past, and cannot be applied, though modern economic conditions may make necessary or beneficial its application. In other words, to say that government possessed at one time a greater power to recognize the public interest in a business and its regulation to promote the general welfare than the government possesses to-day.

In the case of *Gompers vs. The Buck Stove and Range Co.*, 221 U. S., 439, the Supreme Court said:

Society itself is an organization, and does not object to organizations for social, religious, business, and all legal purposes. The law, therefore, recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence, and power that come from such association. By virtue of this right, powerful labor unions have been organized.

But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot

be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made it is the duty of government to protect the one against the many, as well as the many against the one.

The Supreme Court of the United States, when confronted with the effort of Debs and his fellow conspirators to paralyze railway transportation in 1894, said:

If a state, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that state has a power which the state itself does not possess?

There is the issue stated in a vivid and concise manner. The common and normal process of quitting one's job, when multiplied by a thousand or ten thousand, accompanied by coercive methods and accomplished by concerted effort, takes on different aspects and plainly conflicts with the police powers of the state, discussed elsewhere in this book.

One proof of the fact that the reaction against vital strikes is one that will not down is found in Denmark, where laws have been proposed which are far more severe than any proposed in the United States. Radicals who resist every effort in the line of competent industrial tribunals should beware lest they hold back the tide of opinion too long and thereby bring about by their own stubbornness such drastic laws.

The bill introduced in the Folkething, the Rigs-

dag's lower house, according to European correspondents, declared all strikes illegal that are destructive to the community. Disfranchisement and suspension of political rights form the penalty for infractions.

The Clayton Act, in exempting labor unions from the provisions regarding combinations, probably did not contemplate conflict with the general theory of police powers, for it attributed to organized labor a purely negative function—that of quitting or advising to quit work. That negative interpretation of the strike cannot long bear the strain of modern facts.

The section of the Clayton Act touching upon this feature, in dealing with violation of law, says that no prohibition shall be made upon any of these acts:

Persons singly or in concert from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do, or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits, or moneys or things of value, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

Frank P. Walsh, the noted labor lawyer, in commenting upon the Clayton Act, said that labor unions were exempted from its provisions because "the activities of these men consisted of the personal service

which they rendered to the industry, and that any inhibition on their right to quit individually or in concert was an assault upon the Thirteenth Amendment of the Constitution of the United States."

The defect in this line of reasoning has been pointed out by lawyers; hence it may not seem presumptuous to recall them here.

The strike of these days cannot be dismissed from the mind as a mere withdrawal of service by an individual.

Some forms of the strike assume a very positive aspect and cease to be the passive or negative function pictured by the Clayton Act. Some strikes assume the proportions of direct action, or the attempt to alter government by the use of economic pressure. It is therefore an error to apply the Thirteenth Amendment in every case to the strike.

We see that, although the beginnings of Anglo-Saxon law on the subject of labor unionism were clumsy and ridiculous in the light of our present-day civilization, and that the beginnings were wrong, there is a germ of justice in some of the efforts that have come down through the ages, and this germ has been fertilized by recent events. Backed by legal and moral precedents, the efforts of lawmakers should be to fabricate wisely and moderately, so that labor may hold its dearly bought and rightly won privileges of better living and brighter prospects of justice, and that the public and the employers may be sure of life, welfare, and lawful rights of property.

## XIX

### THE PUBLIC—WHAT IS IT?

**R**OUGHLY speaking, one tenth of the total population is composed of the actual members of organized labor and organized capital. For the sake of convenience it may therefore be said that nine tenths of the population represent the public. In reality, of course, the public represents 100 per cent of the population.

In dealing with any given industrial dispute, it is patent that when we speak of the public we mean that part of the population not directly concerned in that particular dispute.

It is upon this definition that we must rest discussions of the relative points of the "eternal triangle." If there is a coal strike the public includes everybody but the miners' union and the operators. It includes all the other craft unions. It may be that the other crafts sympathize with the miners, but that is immaterial to the argument, for a part of the unorganized public may also sympathize with the miners. The other crafts have to buy coal. They have to pay an increased price because of lockouts, striking, or

profiteering or other abnormal condition brought on by workers or employers.

On the rational assumption that every individual is trying to buy his product as cheaply as possible, and that he has a righteous grievance against any person or persons who cause him to pay more, the other craft unions are actually opposed to the action of the coal miners' union when it is shown that the action of the union has caused an increase in the price of coal, just as they are actually opposed to the mine operators when it is shown that the increase is due to the greed of employing capital. This is merely a cold, mathematical fact, regardless of union solidarity or personal predilections.

The public is not a heartless, ruthless mass of humanity, intent upon grinding out the life of labor or oppressing capital. It could not be if it wanted to. The public depends upon labor and capital, not only because labor and capital are a part of the public, but because labor and capital, functioning normally, keep the body politic in a healthy condition.

It is to the interest of the public that labor and capital be treated fairly, hence the setting up of industrial courts need not alarm anyone. The public is not intent merely upon defending itself from oppression and suffering. It is intent also upon keeping the workers and employers at the highest efficiency and in the most prosperous and satisfied state. Hence, when we say that industrial courts are in the

interest of the public, we mean not only the public that is injured by an industrial dispute, but the whole public. The court thus becomes an instrument of all the people, by all the people, and for all the people.

## XX

### SLOWING DOWN PRODUCTION

THE 1920 convention of the American Federation of Labor went on record as favoring the six-hour day, and the ground for this utterance was not that it was needed to conserve the health and well-being of the worker, but that it would provide a large number of jobs, since more men would be required to produce the necessary product.

We will not stop to argue whether a man should work less than eight hours a day, in the natural order of things, for that would be immaterial. Since it is announced that the purpose is virtually to reduce the per-capita production, of course the principle will not draw the line at a six-hour day, but will lend itself equally well to a four-hour or two-hour day, and so on *ad libitum*.

If the argument for a six-hour day is based upon the desirability of reducing per-capita production, and thereby providing more jobs at the same pay, the same argument will apply to still shorter days, with equal force. There is no limit.

And yet in the final analysis there is a limit which

no man may arbitrarily set, and yet which is as inexorable as the law of gravitation. That limit is set by what is sometimes called the "law of diminishing returns." Even though the exact point of its application cannot be determined, it must be reckoned with as a stern economic fact.

Elbert Hubbard called attention to this law in a dissertation upon unionism as applied to the closed-shop principle. It is well enough to borrow the illustration he used.

A locomotive may be made to travel fifty miles an hour upon a certain number of tons of coal per mile. The crude reasoner would say that doubling the amount of coal per mile would cause the locomotive to travel one hundred miles an hour. But the railroad man knows better. The engine would probably travel sixty miles an hour, the fire box and flues would likely be damaged and the roadbed disturbed. The passengers would be endangered and disaster would be invited. Fifty miles would be the pivotal point of efficiency. Beyond that point the returns for the amount of coal consumed would be diminished.

Unionization has done great things for labor. It has brought about shorter hours, better working conditions, and better pay. It has brought labor a more complete reward for its true worth. Organized labor, by getting better laws, has quieted the fears of those employers who opposed those laws. Employers have come to like the laws, regulations, and

customs because they have found that it paid to treat workers well.

Unionization has flourished. Workers found that it paid to unionize. This fact has led some of them to believe that if a ton a mile is good, two tons a mile will be twice as good. Some of them believe that if an eight-hour day is good a four-hour day is twice as good. They do not reckon with the law of diminishing returns. There is a pivotal point somewhere which they may not pass without endangering not only the interest of society as a whole, but their own as well.

#### Who pays for the coal strike?

The union bricklayer helps pay for it. The union steel worker helps pay for it. Everybody helps pay for it. Every hour of idleness means a loss to every member of society. The coal miner helps pay for it himself. The strike means higher coal. It means higher transportation. It means higher flour, meat, potatoes, clothing. The miner sooner or later feels the pressure. The law of diminishing returns is always at work. Idleness means loss of production and loss of production means poverty and hard times.

But, it is argued, overproduction may also cause poverty and hard times. There may be a grain of truth in this, but the statement is not accurate when adjusted to the facts of history. It would be more truthful to say that unequal distribution, inefficient production, exploitation of labor, and defective

finance cause poverty and hard times. It would be unprofitable, however, to venture far into a discussion of this phase of the situation as far as the purpose of this book is concerned. The great fact that looms out of the present industrial situation is that there is a vast amount of friction and lost motion in the industrial machine. If there is overproduction the fault should be remedied, not by the crude and unscientific resort to the strike, which causes extremes of nonproduction at critical points, but by well-ordered and equitable reductions of working hours, basing the reduction upon the statistics of the situation. The only comprehensive and adequate method of bringing about such a stabilization is by resort to the lubricant influence of industrial courts.

The objection has been made that the Industrial Court will work well in times of an upward tendency of wages, but that in hard times, when wages tend downward, the court cannot function without reducing wages, with consequent discontent and friction.

This point is not well taken.

The Industrial Court will prevent capital from taking advantage of a surplus of labor. It is a historical fact that there is little or no labor agitation in times of depression. When an employer can go to a soup house and take his pick of laborers, strikes are few and far between. What recourse is there for the laborer when men are more plentiful than jobs?

What protection has he against the rapacity of the employer who has the power to cut and cut and cut wages?

Employing capital has always taken advantage of labor in times of depression. It has not borne its share of the burden of depression.

The Industrial Court, in such times, will be the salvation of the worker. It will see to it that the employer does not take advantage of the dull season and put a bigger margin between his labor cost and his sales' receipts than he observed in more prosperous times. The court will be a stabilizer, placing a restraining hand on unjustified wage decreases. Instead of breaking down in hard times, the Industrial Court, on the contrary, will then show its greatest value as a guarantor of fair play.

Any rapid trend of wages, whether upward or downward, has a cumulative effect. The rapid upward trend is not wholly good, even from the worker's standpoint, for it ultimately increases the cost of all production by setting up spreading circles of disturbance. The downward trend in any given industry sets up a different circle of disturbance that spreads to other industries and finally reacts on itself, probably causing subsequent reductions. It follows, then, that stabilizing of wages and commodity prices is desirable to the worker. It is desirable to the manufacturer, for it enables him safely to make his plans for the future, thus enhancing efficiency. It is desirable to the public, for it prevents hoarding,

slow buying, feverish and excessive buying, and other features of unhealthy commerce.

New adjustments in wages and commodity prices will always become necessary from time to time, but the speculative element should be reduced to a minimum and the new adjustments should be upon a scientific and humanitarian basis. Eventually industrial courts will indirectly affect commodity prices as well as wages, and they will appreciably tend to keep the ship of commerce on an even keel.

In a perfectly functioning commercial and industrial society—imaginary, of course—there would be no strikes or lockouts. The spare time not needed for production would go for recreation, every worker to get his rightful share. Gradually it would be found possible to readjust conditions of labor so as to give each worker the maximum product reward consistent with the value of his services. There would be no excessive profit taking and no exploiting of labor because of unemployment. The leisure and good pay would not go merely to those who were strong enough to enforce their will, but also to the weak members without organization.

How can such an ideal condition be approached even halfway? Not by pulling and hauling, striking, cutting down production below demand, but by a wise and tactful functioning of government. Such functioning will not be by government ownership or operation, but by conciliatory supervision and authority to settle disputes. The problem will be to

safeguard the American principle of individual initiative and still give the people the protection from industrial warfare to which they are entitled.

"Economically speaking, society thrives or languishes according as production is abundant or scarce," says Ralph H. Hess, the economist. Varying degrees of efficiency in production or distribution depend upon the state of civilization or removal from frontier life.

In discussing the familiar theme that "labor produces all wealth," Thomas N. Carver says: "The kind of labor that is unemployed does not produce all wealth. It must be combined with other kinds of labor in order to be productive." Idleness is therefore an economic waste, and the fact that idleness, in the form of a strike, has been used to improve the workers' condition is no excuse for continuing it as an economic expedient when a better substitute can be provided.

After all is said of the relative importance of various parts of the industrial machine, the fact remains that service is the only true standard of valuation, and as service is diminished the value of the given economic factor decreases.

H. L. Gantt, in his admirable brochure, *Organizing for Work*, says, in speaking of profits *versus* service:

It is this conflict of ideals which is the source of the confusion into which the world now seems to be driving headlong. The community needs service first, regardless of who gets the profits, because its life depends upon the service it gets. The business

man says profits are more important to him than the service he renders; that the wheels of business shall not turn, whether the community needs the service or not, unless he can have his measure of profit. He has forgotten that his business system had its foundation in service, and as far as the community is concerned has no reason for existence except the service it can render. A clash between these two ideals will ultimately bring a deadlock between the business system and the community. The *laissez faire*, in which we all seem to have so much faith, does not promise any other result, for there is no doubt that the industrial and social unrest is distinctly on the increase throughout the country.

I say, therefore, we have come to the parting of the ways, for we must not drift on indefinitely toward an economic catastrophe such as Europe exhibits to us. We probably have abundant time to revise our methods and stave off such a catastrophe, if those in control of industry will recognize the seriousness of the situation and promptly present a positive program which definitely recognizes the responsibility of the industrial and business system to render such service as the community needs. The extreme radicals have always had a clear vision of the desirability of accomplishing this end, but they have always fallen short in the production of a mechanism that would enable them to materialize their vision.

. . . We all realize that any reward or profit that business arbitrarily takes over and above that to which it is justly entitled for service rendered, is just as much the exercise of autocratic power and a menace to the industrial peace of the world as the autocratic military power of the Kaiser was a menace to international peace. This applies to Bolsheviks as well as to bankers.

The extreme radicals have had the vision of a gradual strangulation of the employing capitalists and a subsequent seizure of all means of production, with the abolition of the wage system and nationalization of all industry. Their policy, therefore, has

been that of sabotage, or progressive slowing-down tactics. Through the maze of industrial conflicts, therefore, we see two functions of the strike. One is the traditional function of attempting to secure better wages and working conditions. The other is the attempt to enact a complete revolution, political as well as industrial.

In both kinds of strikes, of course, service suffers, but in the second kind the purpose is to destroy service completely.

The progressive shortening of hours by the sheer power of certain organized groups, for the purpose of decreasing production and creating more jobs, is artificial and poisonous to the body politic. It runs contrary to the principle of service, and illustrates the law of diminishing returns.

The introduction of such artificial proposals is one of the indications that we are at the parting of the ways, indeed. With the present-day industrial-economic system showing symptoms of breakdown, we must either let the state be submerged in an economic system that is becoming too unwieldy and inefficient to give the community 100-per-cent service, or the state must exercise its indubitable right of harmonizing industry with government and of making industry serve society without lost motion and friction.

The first great Chicago strike cost \$80,000,000, according to Bradstreet's. Other strikes have been pyramided on the country, large and small, until the economic loss has reached into the billions each year.

Slowing down production, whether by the strike or sabotage, is crude and unscientific. It destroys the equilibrium of society, and places a premium upon sheer power at the expense of the weaker groups. It is wasteful in the extreme. It must be supplanted by a better way.

## XXI

### CONCLUSION

COURTS properly are facilitators of industry, but not administrators. They order corporations to lower or raise rates or do other things; they do not take over corporations except in temporary emergencies. Their function in regard to industry is supervisory, not paternalistically executive. As representatives of society they do not buy or sell or make contracts. They see that purchases or sales or contracts are made justly and fairly.

Chas. P. Steinmetz, in *America and the New Epoch*, says:

For the small individual producer of bygone days there was no social responsibility or duty, but his business was his private property, to carry on in any manner he liked, subordinate only to the national laws. But when the industries became organized in larger and larger corporations, and, as inevitably must be the case with the continuing industrial development of our nation, industries and groups of industries became essentially controlled by corporations, and the corporation comprises the joint productive activity of many thousands of employees, then a social responsibility, and with it a social duty, arises in the corporation, and the corporation can no more be entirely private property, however much its legal owners may consider it such.

In organized society there can be no unrestricted private property in anything which may affect or influence public welfare and public interest. This is, and always has been, the law of every civilized community. Thus with the growth of corporations, a new relation of mutual responsibility with the public arises. . . .

Politically, the issue was first raised in the great coal strike when the President of the United States forced the contending parties to arbitrate, and since that time the responsibility of the large industrial organizations to the nation has been universally established, has been recognized as a part of our law.

Of course, Mr. Steinmetz's bias as a Socialist causes him to incline to the theory of government ownership. The Industrial Court theory would point in the other direction—away from Socialism—by giving to society and its courts a supervisory rather than an administrative power.

The premises of his argument are entirely valid, however.

The socialistic concept is that under a co-operative industrial commonwealth human nature somehow will be miraculously changed and people will work together for the good of the common cause. Desirable as this consummation is, dependence cannot be placed on it. Instead, we must hold to the advantage of private initiative, and as a countervailing influence erect adjudicatory bodies with power to keep the wheels of industry well oiled and efficient. Those agencies must have real power, backed by the majesty of the law.

Human nature will not be changed by the imposition of a new order. It can only be changed by

individual regeneration. But human nature can be dealt with in a new way, and there is no reason for refusing to believe that industrial conflicts and lost motion can be eliminated by the agencies of a free individualistic society representing the whole public. It is to this gigantic task of the facilitation of industry that society must address itself in the coming era—meeting the new difficulties with new instruments.

The very fact that such agencies exist will restrain potential trouble breeders, just as the presence of police officers prevents crime.

The Industrial Court question, in its basic aspects, is not merely a question of establishing a tribunal to settle strikes. It goes much farther in its purview, and embraces a wide range of activities, somewhat in the same manner that the civil and criminal codes take in wide ranges of human functions.

As government evolved from the simple autocracy with one branch—the executive—to the democracy with its three branches, so we may expect the judiciary to evolve from its single and simple function of administering criminal law to the threefold duty of administering criminal, civil, and industrial law. For a long time there will be a stubborn refusal to admit the third and logical branch, just as there was opposition to other forms of law, but eventually the people will be so thoroughly impressed with the need for the industrial code that the barriers of prejudice and unreasonable precedent will be swept away.

When the industrial code is recognized as a fruit of public necessity, the fear that liberty will be lost will fade away in the knowledge that complex civilization requires a readjustment of concepts on liberty. Dr. Jeremiah W. Jenks, in his book *Modern Business*, makes an excellent point when he says:

Regulations, even close restrictions, may enlarge real liberty. Liberty is not mere freedom from control by government and laws. It is freedom from control of all kinds, by government, by other individuals, by natural forces, by any restraining influences. Freedom, as government should promote it nowadays, is rational freedom for all; and regulations may enlarge liberty by giving to some more than it takes from others. Traffic regulations, and the restraining hand of the traffic officer, increase freedom of movement through city streets. Like restrictions increase the freedom of exit from burning theaters or factories.

The present method of keeping the vast machine of production running is a helter-skelter one. No one knows where the machine will break down next. The people have absolutely no guaranty that it will continue functioning. Billions of dollars' worth of time and product are sacrificed to friction. The age of individual production is gone forever, and with its passing there comes the age in which great groups of people become wholly dependent upon the smooth functioning of the great industrial machine that has been erected.

The various groups, with their various tasks, must be directed expeditiously along lines of least resistance, just as large crowds are directed out of a theater.

The measures of the industrial code, which may seem at first to be onerous, may prove to be actually a relief.

Workmen's compensation acts were once dreaded by business, but under actual practice were seen to have helped business.

The installation of safety appliances ordered by the government was once resisted. Now it is accepted as a matter of course.

And so, as the days have passed by, there has been a gradual readjustment of ideas, so that we find that surrendering some things we once thought were liberties really pointed the way to new wide paths of freedom. There is, in fact, the very substantial beginning of an industrial code, scattered throughout the general statutes. It is idle to say that we will have none of it—we have it already to such an extent that we cannot turn back.

The Industrial Court of Kansas logically and normally springs from flowing and developing tendencies. It does not spring from any single event, such as the coal strike, though that strike served to make the need more vivid. There is involved not only the need of industrial peace, but a return to fundamental American principles which form the very framework of our government.

This return must be accomplished, not by reaction, not by any measures that would take away from labor the advantages it has gained through hard struggle, not by any manifestation of oppression,

but by a constructive and forward-facing program that will enhance the welfare of the worker, insure a larger measure of justice to him as well as to other members of society, stabilize production, and protect the public.

Since labor comprises a great part of the public, it pays a corresponding part of the cost of strikes [says R. J. Caldwell in *The Independent*]. Labor does not seem to understand that increased wages can only be paid out of the additional output of wealth derived from increased production. Otherwise the cost of higher wages comes back on the public in the form of higher prices, and the worker loses in high prices what he gained from high wages.

This is logic that cannot be escaped. If the worker shrugs his shoulder at this and says, "Oh, well, I am going to get mine and let the rest take care of theirs," his victory is only an empty one. The spiral must stop somewhere.

The Kansas Industrial Court [says Mr. Caldwell] is based on the theory, derived from practical experience, that the disputants of industry cannot amicably settle their own affairs, but have to have them settled for them, and on the further theory that the innocent bystander should not suffer the penalty for the quarrels of others. The conclusion thus reached in respect to industrial affairs is no different from the conclusion reached long ago by all civilized nations in civil affairs, which resulted in our civil and criminal courts.

When criminal courts were first established in the West there were many protests of the usurpation of individual rights by the courts, but few to-day would abandon them after having lived under their jurisdiction, and it is difficult to see why results should be less satisfactory when orderly process of law under the administration of such court as the Kansas Industrial Relations Court replaces the violence of strikes. Under the Sullivan Act it is not permissible in New York for anyone to carry weapons

on his person, and yet how infinitesimal is the damage done from the use of weapons in the hands of a few compared with the widespread ruin instituted by strikes. If one hundredth part of the effort and expense incurred by labor in conducting strikes or negotiating industrial disputes were devoted to representing their interests before an industrial-relation court, the results would be a hundred times more satisfactory to labor itself than the present crude, antiquated, and altogether intolerable system of strikes, which visit their first cost on fellow workers and their families.

When men know that there is a court where they may carry their troubles, litigation is decreased. The honest lawyer advises his client how he may avoid breaking the law. The very existence of courts in themselves is a deterrent to wrongdoing. Already there have been several instances where teaching value of the new law has decreased industrial conflict.

One of the objections to the Kansas institution is that industrial tribunals of various kinds have been tried before. That is a Bourbon objection. Those who make it have forgotten nothing and they have learned nothing. They ignore the fact that the industrial conditions of to-day cannot be intelligently compared with those of any in history. Egypt, Rome, Greece, and other empires had their civilizations. In some respects they were equal or possibly superior to that of to-day. But never before were the economic and industrial forces of the civilized world so completely organized. Never before were specialization and the division of tasks so highly developed. Never before were there such inventions to keep organization responsive and powerful—by

means of the electric web of wire and wireless inter-communication, fast trains, and innumerable other means of consolidation and centralization.

The present era—unlike that of any other in history—has developed huge reservoirs of economic power—the packers in one group, the oil industries in another, the mining industries in another, the clothing industries in another, organized labor in another, and so on.

The machine process, combined with intensive specialization, has dehumanized industry to a large extent, thus introducing a peculiarly heartless and unmoral note. Relations must be rehumanized by new points of contact, not only by formal adjudication, but by the formation of industrial clearing houses and intermediaries.

The purpose of this book, therefore, is to gather a few of what otherwise might seem to be unrelated topics, and show how some of the ponderous and portentous movements of the times argue for the cause of the industrial code and industrial courts.

In order to systematize and classify properly the efforts of society to keep its industrial machine running smoothly, certain basic principles must be laid down for a foundation.

One of these principles is that government must be political, otherwise it ceases to be democratic or American. It must not be subject to economic pressure. To be so is to surrender to minority autocracy.

The rights and welfare of the public must be para-

mount. No special interest shall dominate American life. Class-mindedness and class rule have no place in American government.

Autocracy of capital and autocracy of labor must be held sternly in check, alike. There shall be no invisible government—no “new society within the shell of the old.”

Labor must be given a square deal by society. This is not only in justice to labor, but it is a matter of self-preservation for the general public. A greater measure of employee representation and personal contact between employer and employee must be had.

We are still testing whether a government such as ours can long endure. In order to endure it must be based on the self-evident truths of the Declaration of Independence. This means that the people must always be supreme and that no minority tyranny shall be set up. The government of the people by the people for the people shall not perish from the earth.

THE END



## *Books on America's Problems*

### **THE NEGRO FACES AMERICA**

**By Herbert J. Seligmann**

In this book Mr. Seligmann presents his findings on America's great question of the Negro, after first-hand investigation wherever race riots have occurred. A stimulating treatment of the whole problem—economic phases, etc.—is given in a way to make Americans think. *Post 8vo. Cloth*

### **THE STORY OF THE NONPARTISAN**

**LEAGUE** **By Charles Edward Russell**

The facts about the Nonpartisan League, its origin in North Dakota, as Mr. Russell says, "when one man woke up," its capture of the state legislature and subsequent control of the state government are told in this book by a man who was helpful in forming the League.

*Crown 8vo*

### **THE UNITED STATES: AN EXPERIMENT**

**IN DEMOCRACY** **By Carl Becker**

What democracy means to-day, not only in America, but throughout the world—interpreted to Americans in terms of America's own struggle to establish and maintain democratic government. Have we been successful?—here is the data; the answer is for each reader to supply. *Crown 8vo. Cloth*

### **RUSSIA AS AN AMERICAN PROBLEM**

**By John Spargo**

John Spargo sees Russia not merely as a vast problem, but as a vast opportunity, too. He is not a Bolshevik; but for the thinker he clears away the haze of controversy about Bolshevism with his shrewd analysis. For the business man he gives facts that will mean money. *Illustrated*

**HARPER & BROTHERS**

**New York**

**Established 1817**

**London**

*Books of World Outlook*  
*Economic, Social, Political*

**A WORLD REMAKING** By Clarence W. Barron

Among other things, this expert on finance diagnoses the seven giant forms of inflation which are the peculiar aftermath of the recent war—*inflation by war bonds, inflation of lands, buildings, and all forms of property by our system of war-taxation, etc.*—and explodes many of the prevalent theories of financial reconstruction.

*Post 8vo*

**OPEN GATES TO RUSSIA** By Malcolm W. Davis

Not a war book, but a thoroughly practical and authoritative book about the opportunities which Russia will offer in her coming period of reconstruction. For the business man, the traveler, and the social worker.

*Crown 8vo*

**WHAT SOCIAL CLASSES OWE TO EACH OTHER** By William Graham Sumner

In this day of class distinction, the re-publication of Professor Sumner's statement of the case for the existing structure of society, with an introduction by Professor Sumner's successor at Yale, is particularly timely.

*Post 8vo*

**"THE GREATEST FAILURE IN ALL HISTORY"** By John Spargo

From the Soviet's own documents and the speeches of its leaders, Mr. Spargo shows how Sovietism in its original form has failed to cope with unavoidable human inequalities and, under economical stress, has developed into an autocracy worse than Czardom which subverts the chief aims of Bolshevism.

*Crown 8vo. Cloth*

**HARPER & BROTHERS**

New York

Established 1817

London











